



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 4 2008

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

USDA Forest Service
Attention: Roadless Area Conservation - Idaho
Mr. Brad Gilbert, Team Leader
P.O. Box 162909
Sacramento, CA 95816-2909

Dear Mr. Gilbert:

Pursuant to our responsibilities under section 309 of the Clean Air Act, and the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA) has reviewed the Forest Service's (FS) Draft Environmental Impact Statement (EIS) for Roadless Area Conservation on National Forest System (NFS) lands in Idaho, and the accompanying proposed rule at 36 CFR Part 294. Our comments are organized to provide an overview of the issues, highlighting areas where EPA has concerns, as well as other information for your consideration as the FS prepares the Final Idaho Roadless Area Conservation EIS and rule.

The draft EIS and proposed rulemaking are in response to the November 2006, Idaho State Petition to the Roadless Area Conservation National Advisory Committee. This rule will provide State specific direction for the conservation and management of inventoried roadless areas within the State of Idaho and replace the management direction under the 2001 Roadless Rule. All Idaho Forest Management Plans (FMPs) must be comply with the rule; FMPs cannot change elements of the rule through plan amendments. This rule takes into account State and local scenarios for protecting roadless areas and the benefits associated with these areas in the Idaho NFS lands while integrating the national interests in maintaining roadless characteristics.

National Forests provide protection to lands where roadless area values are an integral part in the management of healthy, sustainable ecosystems. With 9.3 million acres of roadless area, Idaho leads the contiguous United States in roadless area protection. In 2001 the FS compiled a large and impressive body of information that supports the decision to protect roadless areas and resulted in promulgating the Roadless Area Conservation Rule. The final EIS for the 2001 Rule states that, "lakes, streams and rivers within inventoried roadless areas function as biological strongholds for many fish species, provide clean fresh water to millions of people, and serve as important habitat to numerous fish and wildlife species.

Based on the information presented in the draft EIS and the proposed rule we have identified a number of concerns and questions that should be clarified or otherwise addressed in the final EIS and final rule. Specifically, we have three primary areas of concern:

- 1) The impacts to surface water, ground water and their beneficial uses, from the potential adverse impacts of roads and phosphate mining.
- 2) The lack of specific direction regarding the duration and closure of temporary roads and the potential to exacerbate already significant environmental impacts from a long standing road maintenance backlog.
- 3) The definition of "significant risk" which is adopted from Healthy Forest Restoration Act (HFRA), and its specific goals which concentrate on the reduction of fire risk and whether this definition should be modified for the multiple goals under the 5 themes of this rule.

We are concerned that the proposed rule will reduce the level of protection to surface water, ground water, and aquatic resources, and exacerbate the adverse impacts caused by the current road system on NFS lands. It is accepted that roads often reduce watershed health through habitat loss and degradation, and water quantity, through flow modification and alteration of existing hydrology, and the addition of nutrients, sediment, pathogens, and invasive species. Further, there is a documented correlation between roadless areas and high integrity watersheds.

We believe that the final EIS should include a discussion of how ground water, source water and drinking water supplies within the General Forest and Back Country Idaho Roadless themes will be protected. Of particular concern would be potential contamination such as selenium and radioactive wastes from phosphate mining and processing. The Agency for Toxic Substances and Disease registry (ATSDR) has published an extensive report on the adverse impacts of selenium and the U.S. Geological Society has compiled an extensive library of information related to selenium and phosphate mining, transport and fate as well as remediation technologies at <http://www.cramnl.wr.usgs.gov/Selenium/Index.htm>.

In recent years, the FS has successfully decommissioned more miles of road than have been constructed. However, there remains an \$8 billion backlog of deferred maintenance on more than 386,000 miles of FS roads nationally. At the same time, the FS is receiving less than 20 percent of the estimated funding needed to maintain its existing road infrastructure. For these reasons, and the ecological significance of Idaho's roadless areas, we recommend that the final EIS provide clear direction on temporary roads, as defined at 36 CFR 212.1 and include specific standards and guidelines on when and to what extent roads should be obliterated consistent with National Forest Management Act. We are concerned that without specific standards and guidelines, road decommissioning will focus on restricting access as opposed to higher levels of obliteration. The proposed rule should fully consider the risks to ecosystems from the construction of new roads, however, temporary, and provide specific direction with regard to when and how temporary roads will ultimately be closed.

Finally, clarification of the terms "significant risk" and "ecosystem components" should be included in the final EIS. Specifically, the final EIS should clarify whether the rule will adopt the definitions from the Healthy Forest Restoration Act (HFRA) Interim Field Guide (USDA/USDI 2004). If that is the intent, it should be recognized that the HFRA was developed to reduce hazardous fuel loading, not to preserve roadless values. Consequently, the definition should be modified to adequately meet this rule's goals which encompass five management themes. In addition, the final EIS should clarify what "ecosystem components" are analyzed to determine significant risk and if they carry equal value.

Based on our review we are assigning a rating to the draft EIS for the proposed rule of Environmental Concerns - Insufficient Information (EC-2). The EC rating is based on the potential for adverse environmental impacts to water quality and aquatic resources and the need for measures to reduce these impacts. The "2" indicates the draft EIS does not contain sufficient information to fully assess the environmental impacts from the proposed action. We appreciate the opportunity to provide comments for your consideration as you proceed with the rulemaking. If I can provide additional explanation of our comments please contact me at 202-564-5400 or Elaine Suriano of my staff at 202-564-7162.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan E. Bromm", with a stylized flourish at the end.

Susan E. Bromm
Acting Director
Office of Federal Activities



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
620 SW Main Street, Suite 201
Portland, Oregon 97205-3026



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IN REPLY REFER TO
ER08/22

Electronically Filed

April 7, 2008

Brad Gilbert
Roadless Area Conservation - Idaho
P.O. Box 162909
Sacramento, California 95816

Dear Mr. Gilbert:

The Department of the Interior has reviewed the Draft Environmental Impact Statement for Roadless Area Conservation for National Forest System Lands in Idaho. The Department does not have any comments to offer.

We appreciate the opportunity to comment.

Sincerely,

Preston A. Sleeper
Regional Environmental Officer



OFFICE OF THE COUNTY COMMISSIONERS
206 COURTHOUSE DRIVE
SALMON, IDAHO 83467

R. E. Cope, Chairman
Brett Barsalou
Rick Snyder

Phone: 208-756-2815

Fax: 208-756-8424

March 22, 2008

To Whom It May Concern:

The Lemhi County Board of Commissioners are happy for the opportunity to comment on the DEIS regarding the Idaho Roadless Rule. As you may be aware, Lemhi County played a leading role in the process of receiving public input at the county level. We wholeheartedly believe that our residents have intimate knowledge of their local environment, and that this knowledge is all too frequently given less respect than it deserves.

We were greatly appreciative of Governor Risch's personal concern and involvement in Idaho's petition to the Secretary of Agriculture regarding IRA management. It is rare indeed for a state governor to possess such a background in forestry. However, we feel that the information gathered from our residents was not accurately reflected in the governor's petition. We therefore would like to offer our recommendations for changes in themes for some of the IRA's on the Salmon-Challis National Forest within Lemhi County.

During the public meetings we held in Lemhi County, and after reviewing the written comments we received, four strong feelings emerged that reflected local public opinion. First and foremost, residents were highly concerned about catastrophic wildfire. Given the fire history in central Idaho for the last decade, such concerns are easily understandable. The area that received by far the most attention was the Jesse Creek Roadless Area, which contains the municipal watershed for the City of Salmon. This area is, of course, of paramount importance to the government of the City, and merits special consideration that we will address as an integral part of these comments. Secondly, a great many of our citizens are well aware of the epizootic infestations of parasitic beetles that are causing widespread tree mortality in our forests. Common comments addressed a lack of management leading to large numbers of dead trees and poor forest health. Third, several comments were received which noted that only a small remnant of our timber industry remains, as the high volume timber mills of the previous century have all disappeared. It was noted that the small operations which remain are vital to our local economy, and efforts should be made to provide access to material in sufficient quantity to allow them to continue operations. Finally, a small number of comments were received encouraging continuing recreational opportunities on forest lands. Although these comments came mostly

from outside Lemhi County, we still considered them to be important, especially when they were addressed to specific areas. Several comments were received stating that, for example, "Much more timber harvest should be performed" or "We need more designated wilderness." Those comments that addressed management options in entirely general terms were considered to be much less valuable than those which were site-specific.

After we reviewed both public comment and GIS data, it became clear that the Jesse Creek IRA was a special area indeed. When the road network was added to the forest map, it became clear that, although almost all of the IRA's in Lemhi County contained a significant number of roads, Jesse Creek did not. Topographical data revealed that nearly all of the area is comprised of extremely steep slopes, making traditional harvest techniques almost impossible. Nevertheless, it became apparent that the amount of beetle kill in the area constitutes an extreme fire hazard threatening a community that contains half of the county's population. To us, it is obvious that a different approach to fire protection is necessary.

A review of the fire history of central Idaho during the past decade shows an apparent repeating pattern. Wildfires tend to be generated by lightning in Wilderness and Roadless Areas, after which they gather strength and move east and northeast in the form of crown fires. In the recent past, only one wildfire has crossed the ridge on the west side of the Salmon River. The Finstur fire of 2000 came over this ridge in the Diamond Creek area, and burned all the way down the slope to the riverbank. This fire occurred less than five miles from the City of Salmon, most of which lies on the west side of the river. From this, we concluded that wildfire in Jesse Creek will be extremely difficult to contain and will have catastrophic effects on the City. As such, we believe that a far more viable strategy is to contain crown fires before they reach the Jesse Creek drainage, on the slopes between Panther Creek and the Salmon River ridge road.

Those slopes are, unfortunately, comprised almost entirely of IRA's. We strongly recommend that barriers to active management on those IRA's be minimized to the greatest extent possible. Therefore, we feel that South Deep Creek, Deep Creek, Perreau Creek, Phelan, Haystack Mountain, and Napias IRA's need to be placed in the theme of general forest. The current forest plan calls for active harvest in these areas, and the Lemhi County Board of Commissioners strongly believes that these types of activities are vital for the safety of our residents.

In regard to the second concern of our citizens in the area of forest health, several areas were pointed out that have been harvested in the past and contain merchantable materials that could be easily removed to reduce fuel loads and help to contain beetle outbreaks. These areas include the Musgrove and Agency Creek areas, as well as the southeastern portion of Jureano and the Wagonhammer and Silverleads drainages within West Big Hole. Designating these small areas as general forest would greatly alleviate the concerns of our county as they apply to both forest health and economic opportunities.

Finally, we feel that recreational opportunities are an area that deserves special consideration from local government. It is helpful to remember that eighty percent of the Salmon-Challis National Forest is classified as wilderness or roadless, so such opportunities are

far from in short supply. However, the governor's petition designated the northern part of Napoleon Ridge as general forest. Since this area overlooks the drainage of the main Salmon River, timber harvest could have a negative impact on the scenery that river-based tourists have come to expect. We therefore recommend that this area be reclassified as backcountry/restoration.

All of these recommendations have been developed cooperatively among the Lemhi County Commissioners, the Salmon-Challis National Forest, Lemhi County Emergency Services, and the Lemhi County Fire Mitigation Plan working group. They are designed to work in conjunction with the forest plan, the county all-hazards mitigation plan, and the local forest collaborative group. They are also supported by the Lemhi County Economic Development Committee.

The Lemhi County Board of Commissioners firmly believes that these recommendations accurately reflect the knowledge and opinions of the citizens of Lemhi County, and are without doubt to be in the best interests of the residents and resources of the county. We ask that you accept these recommended changes, and incorporate them into the Idaho Roadless Rule.

**CLARK COUNTY IDAHO
BOARD OF COUNTY COMMISSIONERS**

P. O. BOX 205 * 224 W. MAIN

DUBOIS ID 83423

(208) 374-5304

April 1, 2008

Roadless Area Conservation – Idaho
P.O. Box 162909
Sacramento, CA 95816-2909

To Whom It May Concern:

Attached are the comments of the Clark County Board of Commissioners concerning the management of the national forest roadless areas in Clark County, Idaho. We appreciate the opportunity to comment on this important rule that has the potential to affect the livelihood, and way of life, of our constituents.

We begin by saying that we unequivocally support the Idaho Roadless Rule over the Clinton Rule (2001 rule). The Idaho rule is so superior to the Clinton rule there is no comparison. The Clinton rule was a top-down, government-knows-best approach that did not consider the desires of Idahoans concerning how they want these roadless areas to be managed.

The Idaho rule does recognize the views of Idahoans. Our constituents participated in developing the management direction for the roadless areas in Clark Co., and therefore the forest plan and corresponding Idaho rule are a reflection of how the people of Idaho feel the roadless areas should be managed. This is a major advantage over the Clinton rule.

Having said that, there are three changes we would like to see in the proposed rule. The first change involves the Primitive category in the Garfield roadless area. It is land near the head of Medicine Lodge Creek and north of F.S. Road 280. It is primarily open sagebrush land with some timber on north-facing slopes. It is well suited to motorized use on designated routes, both for management of grazing allotments and for motorized recreation.

The Targhee Forest Plan put this area in a nonmotorized 3.1.1 management prescription which, as the name implies, does not allow motorized use. Nor does the Primitive category in the Idaho roadless rule. We ask that this 3.1.1 prescription be changed to prescription 3.2g, and the Idaho rule changed to a Backcountry/Restoration category, so motorized use on designated routes and trails can occur. Making this change will recognize the strong interests of our constituents in Clark Co. who were cut off from their use of this area by Targhee forest officials.

The second change we ask is in the Mt. Jefferson roadless area. This change involves prescription 3.1.1, which the Idaho roadless rule classified as Primitive.

In the past five years we have seen a significant increase in Douglas-fir bark beetle activity in the Centennial Mountains. As a result, thousands of trees have died and now provide an increased fuel loading that is susceptible to large catastrophic wildfires. The current management prescription (3.1.1) does not allow these trees to be salvaged and removed. Nor does the Primitive category imposed by the Idaho rule allow for salvage of dead trees. So there is no way to treat the increasing fuel loading here.

To fix the problem, we ask that the 3.1.1 prescription in Mt. Jefferson be modified to allow the salvage of dead and dying insect- and fire-killed trees, or even better, the category be changed to Backcountry/Restoration, which would allow trees to be cut and removed to improve forest health.

The third change we ask is also in the Mt. Jefferson roadless area. This is management prescription 5.1.4b, which the Idaho rule classified as Backcountry/Restoration.

Prescription 5.1.4b is a timber management prescription with a big game security emphasis. To manage this area to provide the mosaic of vegetation species and age classes to meet wildlife security needs, the Forest must actively manage the forest vegetation, including use of timber harvest on a sustained yield basis. But the Backcountry/Restoration category does not allow proactive timber harvest. Timber harvest is only allowed here to maintain or restore characteristics of ecosystem composition and structure; to reduce significant risk of wildland fire effects; or when the cutting, sale or removal of timber is within an already substantially altered portion of a roadless area. Environmental groups will likely argue that a regular program of harvest to emphasize big game security does not meet the intent of the Backcountry/Restoration category and would therefore appeal and litigate to stop timber harvest in this roadless area.

To prevent this we ask that you change the Backcountry/Restoration category to General Forest, which does allow timber harvest on a regulated sustainable basis.

That concludes the changes we are asking for. There are two other roadless areas in Clark County (Italian Peak and Diamond Peak) but we are comfortable with direction in the Idaho roadless area proposal for these two areas and ask for no changes there.

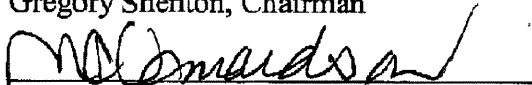
That concludes our comments on the proposed Idaho roadless area conservation plan. We fully support the Idaho rule in concept but ask as strongly as we can that you make the 3 changes we asked for. We will follow your progress on this proposal with much interest. Please keep us informed of your progress.

Sincerely,

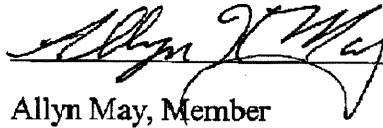
Clark County Commission



Gregory Shenton, Chairman



Mike Leonardson, Member


Allyn May, Member

Copies: Senator Larry Craig, Washington D.C.
 Senator Mike Crapo, Washington, D.C.
 Representative Mike Simpson, Washington, D.C.
 Congressional Delegation Field Representatives, 490 Memorial Drive Suite 102,
 Idaho Falls, Idaho 83402

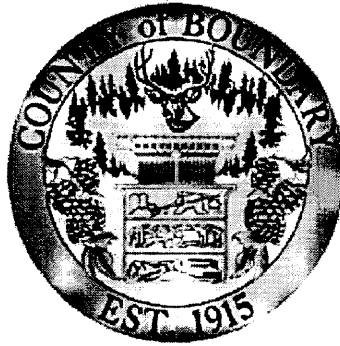
Comments

From: Boundary County Commissioners [commissioners@boundarycountyid.org]
Sent: Friday, April 04, 2008 4:18 PM
To: IDcomments
Subject: Idaho Roadless Rule Comments
Attachments: Idaho Roadless Rule Comments.pdf

Mr. Gilbert: Please review the attached comments pertaining to the Idaho Roadless Rule as signed by Boundary County Commissioners.

Sincerely,

Michelle Rohrwasser, Deputy Clerk
Boundary County Commissioners



BOUNDARY COUNTY
P. O. Box 419
Bonnors Ferry, ID 83805

April 4, 2008

U.S. Forest Service
Brad Gilbert

RE: Idaho Roadless Rule Comments

Boundary County wishes to comment on the Proposed Idaho Roadless Rule and Draft EIS. We want to thank the State of Idaho and the United States Forest Service for their foresight in the negotiations and consideration of the Proposed Roadless Rule. It has been especially refreshing to allow the citizens of Boundary County to have meaningful input into this process. Over the numerous public meetings held with the community, they expressed the importance of roadless areas; however, the overarching concern was that these areas not be allowed to degenerate to a condition that would threaten watersheds, the more primitive areas, or the communities that are at risk for catastrophic wildfire.

It was vital to the majority of those involved that flexibility in the Backcountry/Restoration Category allow for management to those areas as needed to prevent them from being a threat to the economy and the quality of life in my community.

As these Backcountry/Restoration areas usually abut or are within the Wildland Urban Interface (WUI) designated by the county, it is imperative that the lands adjacent to or in the WUI not serve as a threat.

We agree that the General Forest, Rangeland and Grassland (GFRG) be managed for multiple use, and that both the Backcountry/Restoration and the GFRG within the roadless areas provide for forest health treatments and activities, including salvage and thinning, and be given a priority and expedited consideration, at the request of the Governor's Office or the relevant Board of County Commissioners.

We want to express concerns regarding the projected timber cutting and vegetation and fuels treatment in Table 1. We feel uncomfortable in stating an amount of average acres per year for

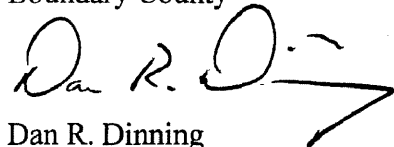
harvest or treatment as this can be used to stall or prohibit treatments that can exceed that amount of acres. This rule should be based upon conditions on the land and those conditions should dictate what and how much is treated per year.

Our community is currently in the process of treating the City of Bonners Ferry's municipal watershed and limiting the amount of acreage per year that could be treated would severely inhibit the ability to protect our drinking water.

We understand this new rule will add more protection for the wildland recreation, special areas of historic or tribal significance, or primitive designations. Thank you for your time and efforts.

Sincerely,

Boundary County

A handwritten signature in black ink, appearing to read "Dan R. Dinning", with a stylized flourish extending from the end.

Dan R. Dinning
Commissioner



**OFFICE OF
BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY
P.O. BOX 48
COUNCIL, IDAHO 83612**

IDD2364.



Bill Brown, Chairman
Mike Paradis
Joe Holmes

Sherry Ward
Clerk of the Board
Phone 208-253-4561
Fax 208-253-4880

April 7, 2008

RECEIVED APR 11 2008

Roadless Area Conservation-Idaho
P.O. Box 162909
Sacramento, CA 95816-2909

RE: Idaho Roadless Rule – Notice of Proposed Rulemaking, Adams County Response.

Adams County supports the rule making if it is necessary based on any pending judicial review. The establishment of a rule that actually had some input and consideration for people that were affected by the rule are very important to the Commissioners. The Clinton Rule did not have that and catered to a specific group of National Forest users. The proposed Idaho Roadless Rule is what we prefer to be implemented if we can not go back to the normal Forest Planning process. However, the Idaho Rule proposal needs some changes and clarification to satisfy some concerns we have. Having worked with the Forest Service on projects and programs in the past and having retired professional as advisors on our Natural Resources Committee we are aware of the difficulty in achieving timely, active, science based management responses to critical situations. Our responses and suggested changes are based on these concerns and considerations.

It is imperative that the final rule include commissioners as advisory, reviewing and supporting facilitators to assure that issues and concerns outside the preservation community are also dealt with. This would provide some assurance that the locally affected rural communities have sufficient consideration in the role of implementing and executing proposals. Obviously the commissioners should be from rural and urban settings to provide an adequate representation and range of view points.

A major concern for this county with the rule is the ability to deal with management of forest health issues utilizing effective science based techniques. In particular we believe the use of silvicultural tools such as thinning and timber harvest techniques are essential to avoid catastrophic health problems. The ability to utilize temporary roads, salvage harvest, thinning and other necessary treatments are an absolute necessity in the Backcountry/restoration and GFRG themes. Removing roads and timber management capability limits all vegetation management activity to either wild-land fire or prescribed fire for more extensive management scenarios. We support the other Roadless Rule themes constraints recognizing that wilderness and primitive forms of recreation are part of the multiple uses of the National Forest System and that special areas have a broad array of values.

There must be a timely and effective response in the appropriate themes to deal with forest health initiatives. The commissioners of the involved county following notification of the local Forest Service officials should be capable of initiating a proposal to deal with

a forest health issue in the various themes and the Forest Service Chief should respond in a timely fashion. The politics of situations should be set aside as much as possible and the science based management initiated. The response should occur rapidly and be made as directly as possible. It may be appropriate to assign time frames to these responses. Agency time frames in dealing with or responding to health risks are often very slow and initiation of action even slower with all the mandated procedures and legal actions delaying the process even more. Forest health risks are sometimes hard to identify making risk assessments difficult. Numerous instances can be cited that illustrate how minor problems quickly became major because of response delays. This usually results in catastrophic large fires being the major vegetation manipulation that occurs. The need for action needs to be clearer than currently written. Without some clarification judicial reviews will re-write what the citizens of Idaho want done.

The Idaho Roadless rule will significantly influence the size and health of a number of wildlife populations as well as Threatened, Endangered, Sensitive and unique wildlife species. The management of vegetation while assuring adequate year long habitat makes it necessary to consider all the available tools to help meet those habitat needs. It is important then to not eliminate temporary roads and timber management practices that can assure habitat for stable populations of these wildlife. Catastrophic fire that follows forest health problems can dramatically influence populations in negative ways. This can influence recreation demands dramatically. Hunters and other users of the National Forest are very important to our rural economy and can be dramatically influenced by poor decisions that result in catastrophic wild fires.

In item 9 and 10 of the draft letter we agree that it is necessary to very clearly spell out the processes discussed there. We also believe it is necessary to make sure other terms and conditions are also spelled out clearly. The correction of boundaries in obviously non-qualified roadless areas must occur without major legal fights concerning qualification. This is especially true since many National Forests in Idaho have not updated their maps. The qualifications for each theme should be clearly spelled and the procedure for changing the theme level for non-qualification should be a clear administrative process. All roads including two tracks that are used to reach irrigation facilities, mines, private land, and county asserted RS 2477 claims should be identified and the area associated with them excluded from roadless consideration. Also, it must be made very clear how boundaries can be changed. Boundaries of roadless areas should have the same ease of management identification applied to them as is proposed by Forest Service for Wilderness Areas. In other words the ability to determine the boundary location by managers and others should be clear. That should mean that peninsulas, islands and other forms of incursions should have their boundaries defined by recognizable features such as topography, or obvious well established man-made features that have stability. Boundaries that require GPS coordinates to determine the boundary line should not be acceptable.

There is an attempt in the rule to diminish the Idaho Rule as a transportation or travel management rule that will not influence Forest Service zeal for road or trail decommissioning or other travel closures. Based however, upon current procedures in the 36 CFR 212 and other associated rules recently in-acted, the Idaho Rules establishment of management themes that very strongly focus on the lack of roads and other forms of mechanical use the rule supports closures and decommissioning. It seems necessary to make a provision in the rule that the Forest Service conducted Road Analysis (FS-643, Aug. 1999) process conducted on transportation facilities that

are adjacent to or access areas under the Idaho Rule be required to be shared with the affected County Commissioners. This could help assure that all needs or risks of the local populace are considered before transportation system decommissioning is undertaken by the Forest Service to meet national desires.

The Adams County Commissioners suggest the following changes to the roadless areas within Adams County. These suggestions were previously made but seemed to have been overlooked in development of the proposed rule.

Council Mountain 018-This 16,569 acre area should have the management theme changed as follows: The east and north sides (Middle and East Fork's of the Weiser River) and the west side ridge (Cottonwood Creek) should be changed to GFRG, approximately 11,000 acres; while the upper mountain area should be changed to Backcountry/Restoration. This will allow the treatment of a growing forest health concern that threatens adjacent private land ski areas and second homes.

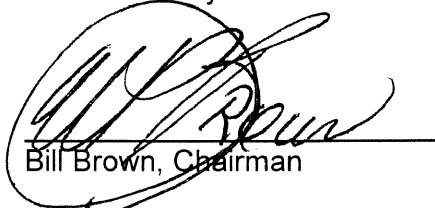
Cuddy Mountain 016-This 41,013 acre area should have had management theme Backcountry/restoration and GFRG assigned in order to conform with Forest Plan and Commissioners expectations. The area has ranch operations, numerous two track roads and forest health problems that will require treatment and restoration.

Indian Creek 019-This 4831 acre area does not meet the standard of 5000 acres. It should be assigned a Backcountry/restoration theme. The county has an RS 2477 assertion on the existing/closed road in the area and several OHV roads exist in the area. A portion of the area recently burned and continues to have forest health problems.

Rapid River 922-This 57,687 acre area with the exception of the portion of the area outside the Rapid River watershed the theme should remain as assigned. The portions within Wildhorse watershed should be assigned GFRG or Backcountry/restoration to conform to restoration needs and continuing forest health issues. The area has several roads that are adjacent to the mid-slope, ill defined boundary.

Hells Canyon 026-This 29,653 acre area will remain primitive regardless of the theme assigned because of topography. It does have numerous lode claims and primitive roads around its perimeter; it probably best qualifies as a backcountry/restoration theme area.

Sincerely,
Adams County Commissioners



Bill Brown, Chairman



Mike Paradis



Joe Holmes



IDD6545.

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PHONE: (208) 345-9126
FAX: (208) 345-0379

April 1, 2008

Roadless Area Conservation-Idaho
Box 162909
Sacramento, Ca. 95816-2909

RE: Idaho Roadless Rule – Notice of Proposed Rulemaking, 73 Fed. Reg. 1135-1158 (January 7, 2008); Comments on Proposed Rule and Draft EIS

On behalf of the Idaho Association of Counties ("IAC"), I write to support timely issuance of a Final Rule to implement the State of Idaho petition regarding management of Inventoried Roadless Areas (IRAs) on National Forests in Idaho. The development of the Idaho petition was thorough and inclusive, and involved county commissioners throughout the process. From the beginning of the state roadless petition process, Idaho has been a model to other states in involving local government and engaging local communities throughout Idaho.

Lead county commissioners in each National Forest in Idaho spearheaded the effort to involve local communities in the petition development process. The lead county commissioners contacted other county commissioners in the forest region to schedule community meetings and gather public comments. Through this process, interested individuals had an opportunity to voice their opinions regarding management of individual IRAs. Utilizing the public comments and their knowledge of the local community, county commissioners worked together in developing recommendations that were incorporated into the Idaho petition.

On behalf of Idaho's counties, I ask that county commissioners continue to be involved as active participants in the rulemaking process as well as in the implementation of the final rule. I ask that the rulemaking process continue to reflect the petition development process: a collaborative, local community-focused effort that addresses issues faced by Counties that encompass and border IRAs, and which rely on resources and uses provided by these areas.

Our more specific comments on the proposed rule and accompanying draft environmental impact statement (EIS) follow:

- 1. General support for the proposed rule and timely completion of final rule.** As indicated above, the Counties and local citizens have participated with the Idaho Governor, Tribes, and conservation, recreation, and industry groups in an open process to complete a workable, broadly supported petition plan for managing Idaho national forest roadless areas into the future. The proposed rule reflects the State of Idaho

petition and this consensus. Please complete a final EIS and rule that will implement the petition without further delay.

2. County participation in implementing the rule and roadless area management.

The Idaho Petition and proposed rule provide for continued collaborative participation in implementing the rule by Counties and other stakeholders through, among other things, the Governor's Roadless Rule Implementation Commission. Please ensure that the final rule expressly includes the Commission and other provisions to assure county and local citizen meaningful roles in working with the Forest Service to implement the rule's provisions for management of roadless areas in Idaho.

3. "Management Theme" allocations and flexibility for forest health management.

The Idaho petition and proposed rule allocate only a minor portion (600,000 acres) of the 9.3 million acres of IRAs in Idaho to the General Forest, Rangeland, and Grassland ("GFRG") management theme category available for multiple use management. Over 5 million acres are allocated to the "Backcountry/Restoration" category, where management projects involving temporary roads and tree cutting are allowed for forest health and other stewardship purposes under certain circumstances. The draft EIS identifies nearly a million acres of forest in the "Backcountry/Restoration" category that are currently at high-risk of loss from insect-disease attacks. At risk areas are not limited to the designated Wildland Urban Interface ("WUI") or municipal watershed areas.

It is important that the final rule authorize sufficient flexibility in the "Backcountry/Restoration" category lands to allow for management needed to address fire and insect, disease, drought, and other forest health and ecosystem problems before they become an emergency crisis for Counties and communities that depend on these areas economically as well as for direct watershed and quality of life benefits. Flexibility to address landscape-scale and other threats beyond designated WUI and municipal watershed boundaries at an early enough stage to be effective is critical. Such measures can be evaluated and implemented at the project level to perpetuate and enhance roadless and ecosystem values long-term.

4. Forest health initiatives upon request of Governor's Implementation Commission or County Commissioners. For at least the "Backcountry/Restoration" as well as GFRG categories of roadless areas, expressly provide for a process for salvage harvest, forest thinning or other forest health treatment activities to be given priority and expedited consideration, upon written notice of request and need by the Governor's Roadless Rule Implementation Commission or the relevant Board of County Commissioners.

5. Mineral exploration and development. The proposed rule does not appear to affect hard-rock locatable (Mining Law of 1872) mineral rights and activities, but does contain restrictions on phosphate and other leasable and saleable minerals in roadless areas. The Forest Service should consult with knowledgeable State agency and

mining/energy industry representatives and assure that the final rule does not unreasonably restrict or confuse leasable and saleable as well as locatable mineral exploration and development.

Leasable/saleable as well as locatable minerals must be developed where they are found. Exploration involving temporary roads and other surface disturbance are often necessary to even know whether a mineral resource is present and economic to develop. Minerals are an important current and prospective component of the economies of many Counties in Idaho, the Gem State.

Mineral exploration and development can be completed and sites reclaimed on national forest lands to standards that do not substantially impair roadless area values. Particularly in Backcountry/Restoration as well as GFRG category areas, the full range of mineral resources should be generally available for regulated exploration and development, with agency discretion to deny or restrict proposed exploration and development activities exercised at the project level rather than in a general rule.

6. **Geothermal energy.** Geothermal exploration and development is a particular example of a renewable energy resource activity that is restricted as a leasable mineral-type resource in the proposed rule. This resource is potentially widespread within many Idaho Counties, and often requires expensive deep drilling exploration supported by temporary roads to explore and delineate prior to making a decision regarding development. The Forest Service should consult with knowledgeable State agency and geothermal industry representatives to assure that geothermal exploration and development opportunities are not excessively restricted in the final rule.
7. **Motorized and other recreation activities.** The proposed rule does not appear to contain any direct restrictions on off-highway vehicle ("OHV") or other motorized or non-motorized recreation travel and other dispersed recreation activities. Proposed 36 C.F.R. 294.26(a). The final rule likewise should leave travel management and other regulation of recreation activities in roadless as well as roaded national forest areas to existing and future forest travel and general management plans.
8. **Grazing.** The proposed rule does not appear to contain any direct restrictions on grazing allotments or other activities. Proposed 36 C.F.R. 294.26(b). The final rule should likewise avoid restricting such activities beyond general limits on road construction and reconstruction in IRAs.
9. **Process for corrections, updates, other modifications.** The proposed rule provides for "administrative corrections" to the roadless area maps at any time, effective upon public notice. Proposed 36 C.F.R. 294.27(e)(1). The final rule should expressly include under this provision: 1) corrections to areas erroneously identified and inventoried as "roadless" when they in fact contain substantial roads existing at the time the final rule is issued; 2) updates to reflect project level authorization of activities that are not prohibited by the final rule in an area, and which have themselves been the

subject of applicable NEPA and forest planning environmental review, public notice and comment—for example, a land exchange.

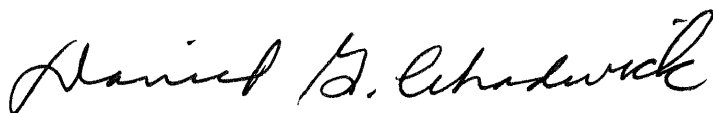
The proposed rule provides for other modifications that would not result in a "significant change" to be effective no sooner than 30 days after public notice is provided. Proposed 36 C.F.R. 294.27(e)(2). "Significant change" could be clarified by replacing it with or defining it as: "substantially diminishing the roadless characteristics of an Idaho Roadless Area."

The final rule should otherwise maintain the flexibility in the proposed rule for modifications through notice and comment rulemaking based on changed circumstances and public need.

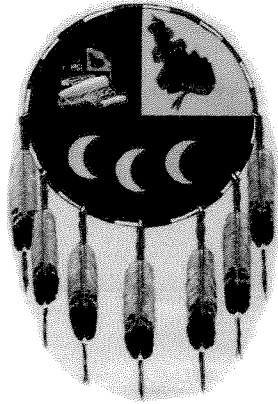
10. **Roadless Area Conservation National Advisory Committee ("RACNAC") and lead County Commissioner assistance for the final rule.** The Forest Service should consult with the RACNAC and also the three lead Idaho County Commissioners designated as liaison for this rulemaking, to consider their recommendations for clarifying definitions of "significant risk" and "stewardship" projects for purposes of activities to be permissible in Backcountry/Restoration category areas, and other refinements for the final rule. These refinements should remain true to the Idaho Petition and concerns expressed in these and prior county commissioner comments and recommendations.
11. **Specific area comments.** We expect individual Boards of County Commissioners to provide comments to you directly about the treatment of particular IRAs in their areas in the proposed rule and draft EIS. The Idaho Petition and the proposed rule recognize that each IRA and its relationship to dependent communities is relatively unique, and a "one-size fits all" approach to management of these areas does not work. The Commissioners are the most informed and knowledgeable elected officials about the IRAs in or next to their Counties and the needs of local communities and citizens. Please give their comments the great weight they deserve and be responsive to their recommendations and concerns in finalizing the rule and EIS.

Thank you for your consideration of these comments.

Sincerely,



Daniel G. Chadwick
Executive Director



Kootenai Tribe of Idaho

P.O. Box 1269
Bonners Ferry, ID 83805
Ph# (208) 267-3519
Fax (208) 267-2960

January 22, 2008

Roadless Area Conservation – Idaho
P.O. Box 162909
Sacramento, CA 95816-2909
IDcomments@fsroadless.org

Re: Notice of Proposed Rulemaking; Request for Comment
36 C.F.R. Part 294
RIN 0596-AC62
Special Areas; Roadless Area Conservation; Applicability to the National
Forests in Idaho

The Kootenai Tribe of Idaho (“Kootenai Tribe”), a federally-recognized Indian tribe headquartered near Bonners Ferry in northern Idaho’s Kootenai River Valley, offers the following comments on the Notice of Proposed Rulemaking concerning Roadless Area Conservation on National Forests in Idaho “(Proposed Rule)”.

The Kootenai Tribe’s aboriginal territory encompasses parts of northern Idaho, western Montana, eastern Washington and areas in Canada. Historically, the Kootenai Tribe relied on the many native fish and wildlife species within its aboriginal territory for cultural, subsistence, ceremonial and commercial purposes. Tribal identity has always depended in large part on caring for these resources consistent with its Covenant with the Creator-Spirit to guard and keep the land forever.

The Kootenai Tribe possesses federally-reserved hunting and fishing rights within its aboriginal territory, including the Idaho Panhandle National Forest. The federal government is obligated to protect and enhance the exercise of the Kootenai Tribe’s federally-reserved rights in its management of the national forests.

The Proposed Rule represents a new method of conducting conservation and management of inventoried roadless areas that recognizes both national values and local situations. It allows the Kootenai Tribe, other tribes, the State of Idaho, the United States government and affected local communities to collaborate and cooperate in

accomplishing varied objectives. The recognition that those communities directly affected by national forest management should have a say in such management is a giant step forward for the nation.

In light of the federal government's continuing obligation to protect and enhance tribal reserved rights, the Kootenai Tribe suggests the following addition to the Proposed Rule:

§ 294.20 *Special area of historic or tribal significance theme*: An Idaho Roadless Area classification intended to be relatively undisturbed by human management activities in order to maintain unique Tribal or historic characteristics. Areas not included within such classification may also contain unique Tribal or historic characteristics, which shall be addressed on a project-by-project basis in consultation with affected Tribes.

The purpose of the foregoing suggested change is to ensure that areas that may not have necessarily been designated a "special area of historic or tribal significance" will still receive protection in the event individual projects are proposed within an area under a different classification that also contain unique Tribal or historical characteristics.

Recognizing the federal government's continuing obligation to consult with the Kootenai Tribe prior to making decisions that may impact Tribal rights or interests, the Kootenai Tribe suggests the following addition to § 294.27:

(g) This subpart does not modify the unique relationship between the United States and Indian Tribes that requires the Federal government to work with federally recognized Indian tribes on a government-to-government basis and strongly support and respect Tribal sovereignty and self-determination. Nothing herein limits or modifies prior existing Tribal rights, including federally-reserved hunting, fishing and gathering rights.

The Kootenai Tribe thanks you for the opportunity to comment on the Proposed Rulemaking. If you have any questions or would like to discuss these comments, please contact Patty Perry, Administrative Director, at (208) 267-3519 or Billy Barquin, Tribal Attorney, at (503) 225-0777.

Sincerely yours,



Jennifer Porter, Chairperson

cc: The Hon. C.L. "Butch" Otter
The Hon. Larry Craig
The Hon. Mike Crapo
The Hon. Bill Sali
Boundary County Commissioners
City of Bonners Ferry



COEUR D'ALENE TRIBE

850 A STREET
P.O. BOX 408
PLUMMER, IDAHO 83851
(208) 686-1800 • Fax (208) 686-1182

REFERENCE:

March 24, 2008

Roadless Area Conservation-Idaho
P.O. Box 162909,
Sacramento, CA 95816-2909

Dear Sir or Madam:

The Coeur d'Alene Tribe (Tribe) has submitted written comments on the management of Roadless Areas within their ceded territory to USDA Forest Service (USFS) Chief Kimball, the Roadless Area Conservation National Advisory Committee (RACNAC), and Idaho Senator Mike Crapo. We have met with representatives of the Forest Service several times and representatives of the State of Idaho once. We have been told both verbally and in writing that our comments are valued and heard but that our concerns are without merit, or are outside the scope of the action being considered. Our comments have been misconstrued as advocating for implementation of the 2001 Roadless Rule or as a desire for 'special management area' designation for culturally significant areas.

Our comments have resulted in no modification of the proposed Idaho rule or the management prescriptions of the roadless areas within our aboriginal territory managed by the USFS. In place of serious consideration of our comments and management recommendations you have attempted to placate us with offers of 'special management area' designation for the Tribe's culturally sensitive lands. The culture of the Coeur d'Alene Tribe is not a place to be circled on a map. Our culture lives in our people and our relationship to our homeland. The management themes proposed by the State of Idaho make no sense to us. Our homelands are not 'Wildland' to be managed as a playground. They may be backcountry to the residents of Boise; for us they are our pantry. We have no 'general' forests; all our lands are special.

The Coeur d'Alene Tribe objects to the Proposed Idaho rule on procedural, political, and substantive grounds. It is questionable if the procedure used in developing and promulgating the Idaho Rule meets NEPA requirements. The Idaho Rule is born out of a political alliance between State and Federal administrations with a record of hostility to Federal land ownership and management; undermining the trust obligations accepted by the Federal government in return for the cession of our aboriginal territory. The management prescriptions for the roadless areas in that ceded territory are substantively inadequate to assure protection of the values with which the Federal government was entrusted by the Tribe.

NEPA requires the managing agency to consider a variety of viable alternatives. The managing agency may present a preferred alternative; however it must be able and willing to implement any of the other alternatives considered. The Draft Environmental Impact Statement (DEIS) presents 3 alternatives, the Idaho petition (USFS preferred), management under the 2001 roadless rule (still in litigation), and management under existing Forest Plans which are under revision or being challenged for procedural deficiencies of the 2005 planning rule. Neither of the proposed alternatives to the Idaho Petition can be realistically analyzed or implemented.

The Tribe's relationship to the USFS is "unique and distinct from those that apply to other interests and constituencies served by the Forest Service (FSM 1563.1)". This relationship requires that USFS planning procedures incorporate early, meaningful, consultation with tribes on proposed actions within a tribe's ceded territory. The USFS manual further defines federal trust responsibilities and directs the USFS to manage lands "in a manner that protects tribe's rights and interests in the resources reserved under treaty (FSM 1563.01d)". The USFS did not inform the Tribe of its intention to undertake a substantial action affecting the Tribal values they hold in Trust until after it had been decided they were going to develop a rule to implement the Idaho Petition. The USFS justified their lack of scoping by claiming there had been adequate public involvement in the prior development of the alternatives. The Tribe had no opportunity for meaningful input in defining the issues to be addressed or the development of the alternatives to be analyzed.

The 2005 Roadless Rule under which the Idaho Rule began development inappropriately conveyed responsibility for initial public involvement to the State of Idaho. The USFS decision to implement the Idaho Petition under the Administrative Procedures Act after the 2005 Roadless Rule was invalidated by the Federal Courts and the decision to not consider petitions from Tribal governments and others interested in roadless area management is evidence of a Federal/State political alliance. The State of Idaho, not having the trust obligations of the Federal Government, made little effort to include Tribal values in their public comment process. The Forest Service's process in developing the DEIS did not correct this breach of their trust responsibility to the Tribe.

The proposed rule was drafted with the help of the "Governor's Roadless Rule Task Force" created by Idaho Executive Order 2006-44.

"The Task Force shall:

- A. Work with the U.S. Department of Agriculture and U.S. Forest Service in drafting the roadless rule for Idaho.*
- B. Ensure that the spirit and letter of the Governor's petition is achieved in the draft and final federal rule*
- C. Review the proposed rule and coordinate State comments in response to the draft federal rule."*

The proposed Idaho Rule, by explicitly recognizing the Idaho Governors Roadless Rule Implementation Committee, institutionalizes the State of Idaho's unwarranted influence over Federal actions within the Tribe's homeland.

"... the Forest Service and the State anticipate collaborating on implementing this proposed rulemaking. This commitment is reflected in the Governor's Roadless Rule Implementation Commission (Idaho Executive Order 2006-43), which is charged with the responsibility of working with the Forest Service to accomplish collaborative implementation of this proposed rule. (proposed Idaho rule, CFR, 73:4, p.1136)"

The Tribe sees the Proposed Idaho Rule as an attempt by the State of Idaho to usurp Federal management authority. This would seriously impair the Federal government's ability to fulfill its trust obligation to protect Tribal rights and values within our ceded territory.

The substantive concerns of the Tribe are merited by the historical loss of habitat for fish and wildlife in our ceded territory under USFS management. We acknowledge fish and wildlife have benefited by changes in the agency's management priority from resource extraction to ecosystem management and sustainability. We are not confident this change will endure under increasing resource demands from an increasing human population, ecological stresses caused by climate change and decreasing revenue for management actions not tied to resource sales. It is a well established precept of conservation science that the size of an area and its proximity and connectivity to other conservation areas are important determinants of ecological resiliency and reliable predictors of biodiversity at all levels and long-term viability. The USFS's insistence on managing roadless areas as discrete parcels separate from the surrounding landscape forfeits irretrievable opportunities for long-term ecological conservation. Few of the roadless areas in Idaho are individually large enough to contain and recover from large-scale landscape disturbances. Recognizing the importance of size and connectivity the Tribe's management recommendations recognize the forests of our homeland face an uncertain future. The combination of past management actions and a warming drying climate increase the risk of large-scale insect infestation, disease and, wildfires. We do not believe the USFS has the resources to significantly reduce those risks through management actions. The Tribe's recommendations create large connected natural areas that increase the ability of the landscape to recover from large disturbances and adapt to a changing climate.

The 'Backcountry/Restoration' management theme, which is recommended for almost all roadless areas in our aboriginal territory, is particularly troubling. The stated intent of this management theme is to maintain the roadless character of an area while providing management flexibility to maintain forest health and protect at risk communities. Areas within the backcountry/restoration theme could be further designated as 'community protection areas' or 'significant risk areas' within which more aggressive management actions would be allowed. Of the roughly 5 million acres recommended for backcountry/restoration management over 2

million acres (B. Gilbert, pers. comm.) could be designated as community protection or significant risk areas. Currently most restoration activities on lands managed by the USFS are dependent upon revenue derived from resource extraction; few dollars are appropriated specifically for ecological restoration. It is unlikely the USFS will see any increase in restoration funding, forcing them to generate revenue through the sale of timber and other resources in order to pay for the restoration mandated by the Idaho Rule. It is our belief the combination of limited restoration dollars and the influence of the Governor's Roadless Rule Implementation Commission will result in the harvest of the last native forests in our homeland.

The Coeur d'Alene Tribe recommends that the USFS begin the process over by doing adequate scoping. Then, the Tribe recommends that the USFS create a new alternative that encompasses the Coeur d'Alene Tribe's earlier recommendations. The USFS, by not including areas that are supposed to be covered by travel management plans and the forest plans, will not be able to adequately address cumulative impacts and global climate change impacts if it does not include all areas under their jurisdiction.

We recognize the importance of resolving the decades of controversy surrounding roadless area management. The proposed Idaho rule will not accomplish that. The NEPA irregularities and management limitations of the proposed Idaho rule invite appeal and ongoing litigation. We invite the USFS to develop a process that fulfills Federal trust responsibilities, recognizes and honors desires of a diversity of governments, and is likely to result in robust management recommendations. The proposed Idaho rule and DEIS was not developed in such a process and we oppose it in its entirety.

Sincerely,



Chief J. Allan,
Chairman

tm:CJM

1DD1819



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

April 7, 2008

By Electronic mail (IDcomments@sroadless.org)

Roadless Area Conservation-Idaho
P.O. Box 162909
Sacramento, California 95816-2909

**Re: Nez Perce Tribe's comments on the proposed Idaho Roadless Rule (Rule)
and Draft Environmental Impact Statement (DEIS)**

Dear Sir or Madam:

On behalf of the Nez Perce Tribe (Tribe) I would like to thank you for the opportunity to comment on the above-captioned matter. The Tribe is a federally-recognized sovereign with treaty-reserved rights in the National Forest System (NFS) lands that stand to be affected by the proposed Rule. Based on a thorough review of the proposed Rule, the DEIS, and staff-to-staff meetings between tribal, Forest Service, and State of Idaho personnel, the Tribe has determined that it must remain unsupportive of the proposed Rule.

Although the Tribe does not share the United States Department of Agriculture and State of Idaho's enthusiasm for this Rule, I would like to acknowledge the State of Idaho's efforts to address some tribal concerns in drafting it. The Tribe appreciates the State of Idaho's acknowledgment that the Tribe identifies as culturally and spiritually significant many areas that will likely be affected by the Rule. Specifically, the Tribe was pleased to see the creation of a separate management theme that provides strong protections for areas of tribal cultural and spiritual significance.

However, protection of some areas that are culturally and spiritually significant to the Tribe addresses only one of the myriad concerns the Tribe has expressed to the Forest Service and State of Idaho regarding the potential implications of this Rule on tribal trust resources on NFS lands within the ceded territory. As of the date of this letter, unfortunately, most of the Tribe's concerns regarding the Rule's relaxed restrictions on timber cutting and road building in roadless areas within the ceded territory remain unresolved. These outstanding concerns, and other issues discussed below, have led the Tribe to conclude that the proposed Rule does not provide sufficient watershed and habitat protections necessary to safeguard the Tribe's reserved rights guaranteed under the Treaty of 1855. Further, the Tribe is deeply concerned whether the Rule is commensurate with federal laws that apply specifically to Indian tribes such as the

United States' fiduciary responsibilities to manage tribal trust resources for the benefit of the Tribe, or generally the Forest Service's responsibilities under the National Forest Management Act (NFMA), to conduct activities on the Forest that are consistent with applicable land resource management plans. Accordingly, the Tribe does not endorse the proposed Rule and instead reiterates its support for maintenance of the Roadless Area Conservation Rule ("2001 Roadless Rule").

The Treaty of 1855

The Tribe is a federally-recognized sovereign that traditionally held exclusive use and occupancy over approximately thirteen million acres in what are today north-central Idaho, northeastern Oregon, southeastern Washington, and western Montana. In 1855 the Tribe entered into a treaty with the United States, reserving, among other guarantees, rights necessary for the cultural, religious, ceremonial, subsistence, and commercial survival of the Tribe. Treaty of June 9, 1855, 12 Stat. 957 (1859). The Treaty of 1855 is the supreme law of the land. U.S. Const., Art. VI, cl. 2.

Article three of the Treaty of 1855 expressly reserves certain rights of the Tribe, including fishing in usual and accustomed places, and hunting, gathering and grazing rights on open and unclaimed lands. A significant amount of land ceded to the United States by virtue of the Treaty of 1855 is now designated as NFS lands that are managed by the United States Forest Service. Nez Perce tribal members continue today to use this same land to exercise their Treaty-reserved rights.

Brief History of the Tribe's Involvement in the Issue

The Tribe has closely monitored the development of the proposed Rule since 2005, when then-governor Kempthorne announced his intention to petition the Bush Administration with specific recommendations for the management of 9.3 million acres of NFS roadless areas located within the State of Idaho. On June 28, 2006 the Tribe responded to Governor Risch's invitation to comment on the proposed roadless petition to Secretary of Agriculture Michael Johanns. In this letter the Tribe affirmed its general policy against further developing remaining roadless areas in on NFS lands in Idaho but acknowledged the State of Idaho's responsibility to respond to the diverse needs of its citizenry. The Tribe also identified several examples of ceded territory within NFS lands that are of particular concern to the Tribe because those lands are of cultural and spiritual significance and support the fish, wildlife and forest products that tribal members harvest under their treaty-reserved rights.

Governor Risch responded to the Tribe's letter on September 12, 2006. He stated that based on the Tribe's concerns he would recommend that the petition be changed to provide further protections to culturally significant areas to the Tribe. The Tribe wrote to Governor Risch on November 29, 2006 thanking him for changing the management prescription for three areas that the Tribe identified. However, the Tribe was also very clear that that it was disappointed that Governor Risch declined to adopt the Tribe's request to maintain existing protections from logging and road building in most of the specific roadless areas that the Tribe identified as critical. Moreover, the Tribe expressly noted that these areas are particular

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examples only, adding that the Tribe would prefer that all remaining roadless areas remain roadless, with little active management, given the already high level of management and development of the roaded areas within the State of Idaho.

In October, 2007, State of Idaho and Forest Service staff presented an update on the Idaho Roadless petition process to the Nez Perce tribal leadership. At that meeting, the Tribe expressed concerns about lack of consultation, indicating that the Forest Service, as an agency of the United States, has an obligation to work with the Tribe independently and on a government-to-government basis to ensure that a constructive, ongoing dialogue occurs between the two governments regarding the Rule and its potential implications for tribal interests. The Tribe also reiterated concerns expressed in previous letters to the State of Idaho over the potential effects that the "Backcountry/Restoration" management theme posed to tribal reserved rights on NFS lands within the ceded territory.

In Washington D.C. in January, 2008 I provided testimony to the Roadless Area National Advisory Committee (RACNAC) regarding the Forest Service's federal trust responsibility to tribes provided for in the U.S. Constitution, treaties, statutes, executive orders, regulations, and court decisions. Specifically, I expressed a concern that the Forest Service had not consulted independently with the Tribe early in the development of the proposed Rule and the DEIS. In February, 2008, tribal staff met with Forest Service staff independently to discuss what the Tribe identified as discrepancies between the proposed Rule and Governor Risch's 2006 petition and to address several outstanding concerns regarding the examples of areas in roadless areas within the ceded territory the Tribe had indicated require particularly strong management protection.

General Comments

1. Lack of Consultation with the Forest Service

As a fiduciary, the United States and all its agencies owe a trust duty to the Nez Perce Tribe and other federally-recognized tribes. See *United States v. Cherokee Nation of Oklahoma*, 480 U.S. 700, 707 (1987); *United States v. Mitchell*, 463 U.S. 206, 225 (1983); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942). This trust relationship has been described as "one of the primary cornerstones of Indian law," Felix Cohen, *Handbook of Federal Indian Law* 419 (2005), and has been compared to one existing under the common law of trusts, with the United States as trustee, the tribes as beneficiaries, and the property and natural resources managed by the United States as the trust corpus. See, e.g., *Mitchell*, 463 U.S. at 225. The United States' trust obligation includes a substantive duty to consult with a tribe in decision-making to avoid adverse impacts on treaty resources and a duty to protect tribal treaty-reserved rights "and the resources on which those rights depend." *Klamath Tribes v. U.S.*, 24 Ind. Law Rep. 3017, 3020 (D.Or. 1996). The duty ensures that the United States conducts meaningful consultation "in advance with the decision maker or with intermediaries with clear authority to present tribal views to the ... decision maker." *Lower Brule Sioux Tribe v. Deer*, 911 F.Supp.395, 401 (D. S.D. 1995).

Further, Executive Order 13175 provides that each "agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory

policies that have tribal implications." According to the President's April 29, 1994 memorandum regarding Government-to-Government Relations *with* Native American Tribal Governments, federal agencies "shall assess the impacts of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities." On September 23, 2004 President George W. Bush issued Executive Memorandum Government-to-Government Relationship with Tribal Governments, reaffirming, among other responsibilities, President Clinton's Executive Order requiring agencies to consult with tribal officials early in the process of developing regulations. As a result, Federal agencies must-proactively protect tribal interests, including those associated with tribal culture, religion, subsistence, and commerce. Meaningful consultation with the Nez Perce Tribe is a vital component of this process.

By December, 2007 letter the Forest Service informed the Tribe that it intends to defer engaging in formal consultation with the Tribe with respect to the Rule until the period between the release of the Draft and Final EIS. Deferring consultation with the Tribe until after the proposed Rule and DEIS were developed is not consistent with Presidents Bush and Clinton's executive orders requiring consultation early in the process of developing proposed rules or regulations.

Further, the DEIS states that "[i]mpacts on tribal Governments and tribal practices from resource management activities would be minimal because of consultation requirements." DEIS, § 3.14, pg. 265. Although this statement appears to acknowledge the unique relationship that exists between the United States and the Tribe, the statement nevertheless provides no specific direction or assurance that "consultation requirements" would indeed minimize such impacts. The Rule does not articulate the role and scope of tribal consultation in directing resource management activities within the context of the proposed management themes. For example, timber cutting and roadbuilding would be allowed under certain circumstances for many areas that are under the Backcountry/Restoration management theme but which also are areas that the Tribe has identified as important for maintaining quality fish and wildlife habitat. Consulting with the Forest Service or other federal agencies with regard to these resource management activities may, but not necessarily guarantee, minimizing impacts to the Tribe.

2. *The Rule's Purpose and Need For Action Addresses State and Local But Not Tribal Concerns.*

It is clear, given the Purpose and Need section of the DEIS, that tribal perspectives and values regarding the management of roadless areas within NFS lands in Idaho were not given appropriate consideration in drafting the Rule. The Purpose and Need section indicates a desire for "State-specific direction" for the conservation and management of inventoried roadless areas within the State of Idaho." DEIS, § 1.3, pg. 23. The document states further that the Rule "integrates local management concerns with national objectives" and that the Department of Agriculture "believes the most viable path for lasting conservation of these areas must properly integrate local, State, and national perspectives on roadless area management."

Based on the plain language of the Purpose and Need section, it is clear that integration of tribal perspectives in managing roadless areas is not among the Department of Agriculture's

central motivations driving this Rule. The Tribe is not a State, and it is not appropriate to relegate the Tribe's perspective to the category of "local." The Tribe is a sovereign government and signatory to the Treaty of 1855. The Tribe has treaty-reserved rights in many of the NFS lands that the Forest Service seeks to manage under the Rule. It is unclear, therefore, why the Forest Service, in its unique role as trustee over tribal resources contained in NFS lands for the benefit of the Tribe, would support a Rule whose core purpose and need is respond to State and local, but not tribal, perspectives in roadless area management. If the Rule is built around protecting State and local perspectives without according appropriate consideration to Tribal values, then the Department is not embracing the balanced approach to roadless area management that is necessary to protecting the Tribe's treaty-reserved and other trust interests within the ceded territory on NFS lands in Idaho.

3. *The Department Has Not Provided a Thorough, Reasoned Analysis Supporting The Need for the Rule*

Another Department motivation for the Rule which troubles the Tribe is that the Department's insistence on a perceived need for "more flexibility" for protection of communities and water supplies against the threat of wildfire. The Rule states that the "Department and the State believe a reduction in significant risk situations before they become imminent threats to local communities and water supplies can be better achieved by providing flexibility beyond the...2001 Roadless Rule." Although the Tribe does not question the importance of protecting people and property from wildfire, the Department, by seeking what it characterizes as "more flexibility" to protect from wildfire, should, at minimum, offer the Tribe and the general public a reasoned analysis detailing how current federal law fails to provide the needed protections. The Department does not accompany its assertion with evidentiary support - such as documented occurrences, investigative results, comparative studies, or other necessary objective evidence - demonstrating that "more flexibility" beyond what the 2001 Roadless Rule (and other federal law) is, in fact, needed.

4. *The Rule Is Not Consonant With NFMA's Requirement that LRMPs Govern Management Activities on the Forest*

In addition to the Tribe's concerns with respect to the Rule's purpose and need, the Tribe is also very troubled to see that the Rule seeks to supplant existing management standards and guidelines developed under the National Forest Management Act (NFMA), 15 U.S.C. §§ 1600-1614 (1976). According to the DEIS, regulations established under the Rule "would *supersede* forest plan direction and *cannot* be changed by forest plans. Therefore, future projects to implement the forest plan in roadless areas would be required to be consistent with the Rule." DEIS at § 2.4, pg. 58 (emphasis added).

In a staff-to-staff meeting with the Tribe in February, 2008, The Tribe asked the Forest Service to clarify this statement with respect to current forest plan direction provided for under the existing LRMPs. The Forest Service responded that in drafting the Rule, it endeavored to apply the proposed management theme that most appropriately reflects the existing forest plan direction under the LRMPs. Any inconsistencies, the Forest noted, would be resolved in favor of

the Rule's direction. Thus, inconsistent current and future direction provided for under the LRMPs would necessarily yield to the Rule.

Prohibiting direction to be changed by forest plans changes that are "inconsistent" with the Rule is at odds with Congress' intent in enacting NFMA. Congress provided clear direction for management of activities on national forest lands, requiring the Forest Service to develop Land and Resource Management Plans (LRMPs) to govern all activities on a forest. These LRMPs were to be developed with extensive public involvement provided under NEPA. The Tribe has provided extensive input over the years into the development of the LRMPs for several forests within the ceded territory. Many of the standards and guidelines existing on these forests reflect the Tribe's and Forest's ongoing efforts to ensure that habitat on NFS lands within the ceded territory is maintained to provide for protection and perpetuation of the Tribe's treaty-reserved interests.

In contrast to the Tribe's significant involvement in the development of the LRMPs over the years, most of the Tribe's requests seeking protections in roadless areas within the ceded territory, which are at least as protective as the 2001 Roadless Rule and existing forest plans, were not adopted. These existing protections which the Tribe would like maintained to protect treaty-reserved interests would likely be considered "inconsistent" and therefore "superseded" under the Rule. Since the Rule would prohibit forest plan changes that are inconsistent with the Rule, the Tribe's future involvement in the development of LRMPs which seeks to augment habitat or watershed protections in areas where the Rule allows discretionary road building and timber cutting would likely be foreclosed.

The Forest Service's Intermountain Region January 30, 2008 Briefing Paper regarding the Payette Forest's review of the Idaho RAC DEIS states:

A review and comparison of the Payette Plan and Id_RAC reveals that there are actually differences in Id_RAC management themes and the Payette Forest Plan that are not captured nor accurately reflected in the DEIS due primarily to interpretation and crosswalk of the Payette Plan MPCs and Idaho Roadless themes.

The document continues:

As a result of the mis-interpretation of 3.1 with Backcountry, there is approximately 399,553 acres of roadless areas of MPC 3.1 that the Id_RAC places in a less restrictive management category than reflected in the Forest Plan.

The Tribe believes that the Rule's categorical prohibition on forest management activities that are allowed or provided for under the current LRMPs but which are "inconsistent" and therefore "superseded" under the Rule violates NFMA. The Tribe proposes that the Forest Service resolve this inconsistency by changing the Rule to provide that conflicts between LRMPs and the Rule shall be resolved in favor of the existing LRMPs.

5. *Direction Under the "Backcountry/Restoration" Management Theme is Poorly Defined and Excessive in Scope To Protect Communities And Water Supplies From Wildfire*

Despite the Forest Service's efforts to minimize conflicts applying the Rule's management themes to roadless areas governed under existing LRMPs, there are substantial incongruities. First, the Rule does not define "wildland-urban interface (WUI)." This term should be defined in the Rule so that its delineations can be clearly ascertained according to objective criteria, such as distance from communities or known areas that require fuel treatment.

Second, the Rule must define the term "significant risk." If a primary purpose of the Rule is to protect citizens from a "significant risk" of the imminent threat of fire, then ascribing that term a precise meaning in the Rule will undoubtedly assist the Forest Service, State and local personnel tremendously in understanding the contours of that term and implementing it through regulations and on the ground.

Third, fuel treatments conducted to reduce the "significant risk" of wildfire should be limited to areas within the WUI. Currently, the Rule identifies the WUI as encompassing approximately one million acres, yet less than half of those acres are in high priority fire risk areas as defined by fire regime and condition class. Yet the Rule, as written, would apply the Backcountry/Restoration" management theme to over 5 million acres. This vast acreage, targeted for more flexibility in conducting fuel reduction activities, is clearly excessive given the actual threat to communities and property.

Fourth, the Rule states that under the Primitive and Backcountry/Restoration themes, timber harvesting will be permitted if "the cutting, sale, or removal of timber will maintain or improve one or more of the roadless characteristics." This language suggests that timber harvest will be allowed even if *only* one of the roadless characteristics is maintained. Yet the DEIS states that timber harvesting shall not be allowed under those themes if the activity would "substantially alter any of the roadless characteristics." DEIS at 197, 214.

6. *The "Backcountry/Restoration" Management Theme Will Affect hundreds of thousands of acres of habitat that supports treaty-protected resources*

Although the Tribe does not support the Rule because it stands to negatively affect hundreds of thousands of acres of ceded territory, the Tribe has nevertheless provided the Forest Service and the State of Idaho with a list of areas in roadless areas within the ceded territory that are of particular concern to the Tribe and therefore warrant the highest possible watershed and habitat protections.

Generally, the Tribe believes that you should seek to avoid opening areas in important anadromous fish habitat to additional development. Streamside roadbuilding and logging has caused a significant decline in the ability of large parts of the Forests to adequately absorb impacts from logging activities. In these areas, significant sediment input to the streams is likely to occur even with relatively small scale logging operations. Sediment impacts are one of the

primary reasons for the loss of adequate habitat for salmon and steelhead in the national forests. As a result, recovery of these species is delayed, causing a significant impact to the state's fishing and tourism industries, and well as placing additional pressure on the state's farmers and industries to reduce habitat impacts or provide additional protections in order to meet recovery goals. The Clearwater River, as it runs directly through the Tribe's Reservation, is of particular importance to the Tribe for salmon and steelhead recovery. The Tribe considers this area its back yard, and takes development causing impact to fish habitat within the Clearwater watershed very seriously. The Tribe has spent millions of dollars in habitat improvement and fish supplementation projects in this watershed, and as such, seeks the highest level of protection for the roadless areas that drain into the Clearwater subbasin.

North Lochsa Slope and Lochsa Slope Roadless Areas

The North Lochsa Slope, and Lochsa Slope Roadless Areas on the Clearwater NF provide extensive tracts of relatively intact habitat which should be protected from development in the Rule. These roadless areas drain into the Lochsa Wild and Scenic River corridor, which in turn drains in the Clearwater River, which runs through the Nez Perce Reservation. As such, these two roadless areas not only provide prime habitat for many of the salmon and steelhead which migrate through the Tribe's Reservation as adults, but also serve to provide areas spiritual and cultural importance to the Tribe.

One example of a roadless area that contains critically important habitat for wild steelhead is the Fish Creek drainage (including Hungry Creek) in the North Lochsa Slope Roadless Area. The area is relatively undeveloped and in relatively pristine condition, and has been described by many of the Tribe's fishery biologists as the best wild steelhead habitat in the state. Opening this area to development would significantly impact the recovery of the Clearwater River ESA listed steelhead.

Rackliff-Gednev Roadless Areas

This is another roadless area which contains watersheds which eventually drain into the Clearwater River, and thus should be protected. This roadless area's creeks drain into either the Lochsa or Selway wild and scenic rivers, which should be reason enough to afford them the highest level of protection. Additionally, this roadless area borders the Selway-Bitterroot Wilderness Area, and thus development of this area would damage the potential of this area to be included into the wilderness in the future. Additionally, development of areas in close proximity to wilderness areas would potentially damage the wilderness characteristics of those protected areas by making development clearly visible from inside the wilderness. Seeing logging patches and roads from within the wilderness ruins much of the spiritual importance that Nez Perce Tribal members gain from wilderness.

East and West Meadow Creek Roadless Areas

Both of these roadless areas contain important habitat within the Meadow Creek/Selway River/Clearwater River watersheds, and should be protected for the reasons described above. Additionally, both of these areas are adjacent to the Selway-Bitterroot Wilderness Area, and

should again be protected for the reasons described above. Beyond this, the Meadow Creek watershed contains an important historic fishery of the Tribe, as well as numerous cultural and archeological sites.

Rapid River Roadless Area

It should go without saying that the Tribe considers Rapid River as one of the most important rivers within its historic range. Luckily for the Tribe, much of the watershed is undeveloped and designated as a wild and scenic river. Opening this area to development, or even the prospect of opening this area to development, would be considered a slap in the face of the Tribe, and would likely jeopardize the potentially fruitful future working relationship between the Tribe and the Governor's Office. The Tribe strongly recommends elimination of this area from consideration of inclusion in the governor's petition. In fact, the Tribe would very much appreciate the governor's consideration of this some of this area for inclusion in the adjacent Hells Canyon Wilderness Area. Such a step would provide lasting protection for this centrally important region of the Tribe's ceded and historic use territory.

French Creek and Cottontail Point/Pilot Peak Roadless Areas

Both of these roadless areas contain important tributaries to the Salmon River, which is also a focus of the Tribe's restoration and protection projects. Also, the Cottontail Point/Pilot Peak roadless area is in very close proximity to the Frank Church-River of No Return Wilderness Area, which brings thousands of tourist visitors to Idaho every year. Above and beyond the impacts to the fishery in the Salmon River by developing these areas, damaging the areas adjacent to this wilderness area along long stretches of the Salmon River would be very damaging to the state's tourism economy in this region.

Bighorn-Weitas Roadless Area

Much of the Bighorn-Weitas Roadless Area is also an important area for fisheries concerns. While most of people generally associate the Tribe with anadromous salmon, steelhead, and lamprey, but Tribal members have historically also harvested resident species like cutthroat. The Cayuse and Kelly Creek drainages offer spectacular trout fishing opportunities, and would be dramatically impacted by logging and roadbuilding due to the highly erodible sediments found in these drainages.

While this area is also important for resident fish, it has critical importance for the wolf recovery effort. Additionally, this area provides prime elk hunting territory, which the Tribe has utilized for thousands of years. While some argue that timber harvest is beneficial to elk habitat, it is unquestionable to Tribal members who have knowledge of areas pre and post logging, that habitat is significantly degraded, and elk use of an area is significantly reduced in post-logging habitats. As such, this area should be protected in total, or with large chunks remaining undeveloped so as to maintain the migratory routes and protective habitat used by the elk in the region. If anything, this area needs fire reintroduced on a large scale, and logging/roadbuilding eliminated in order to help improve elk habitat.

1/18/19

South Fork of the Salmon

This area, and in particular the stretch of river between the confluence of the East Fork South Fork and the South Fork of the Salmon River and Warm Lake, is important for the Tribe's anadromous fish restoration efforts. Possibly this year or the next the Tribe intends on extending its fishery restoration efforts to this portion of the South Fork. Thus, maximum protection of the area abutting this portion of the Salmon River is essential.

Conclusion

Thank you again for the opportunity to provide comments regarding the draft Idaho Roadless Rule and DEIS. In summary, the Tribe is concerned that the draft Rule does not reflect adequate consultation with the United States, and the draft Rule does not provide the solid level of protection to the Tribe's treaty-protected interests that the 2001 Roadless Rule does. My hope is that our governments will work closely and collaboratively over the next few months, between the DEIS and FEIS, to address the Tribe's concerns so that whatever roadless area management approach the United States ultimately embraces will reflect the Tribe's contributions for the protection of the Tribe's treaty-reserved interests, now and forever.

Sincerely,



Samuel N. Penney
Chairman

P. 256 - 3.13 Cultural Resources

Introduction

1. Heritage tourism is one of the fastest growing sectors of the tourism industry, and it is ranked among the top two or three reasons that people take vacations (USDA 1999). In 1994 and 1995, an estimated 123.3 million people visited a historic or prehistoric site in the United States (Cordell et al. 1999)

National Forest System lands contain many of the best preserved sites that remain in the United States, in some of the least disturbed natural settings.

2. Idaho Roadless Areas are likely to contain a significant proportion of the least damaged cultural resources that occur on NFS lands because of the lack of human-caused disturbance.

Cultural sites on NFS lands can be expected to become increasingly valuable resources that more people wish to visit in the future.

Obviously the state officials needs to have a better understanding of the sensitivity of the information they intent to share in this document, and of the trust obligations of the USFS to protect this type of information. We might as well put a neon sign out for all of the vandals to see, so they can all go out and use these newly developed roads to get to these undisturbed areas.

As tribes, we have continually shared our frustrations with this type of insensitivity. The tribes have continually struggled to preserve our sites and our beliefs, and it is very disturbing to see what is included in this document.

3. If a site is identified, it is evaluated to determine whether it is significant, and eligible for listing on the National Register of Historic Places.

By Whom?... an archaeologist? Someone that knows little about our history, or our traditions. They have their theories, but they don't interact with the tribes to gather tribal knowledge. Whether a site is eligible for listing is irrelevant to the tribes. A site could have very little physical evidence at the site and still be a very significant site to the tribes.

P. 257

4. I don't agree with the definition provided for EO 13007. EO 13007 requires that in managing Federal lands, agencies must accommodate access and ceremonial use of sacred sites and must avoid adversely affecting the physical integrity of these sites.

Why is there no mention of the American Religious Freedom Act (AIRFA)?

Affected Environment

5. Approximately 2.2 million acres (about 10% of NFS lands) in Idaho have been inventoried and more than 14,500 cultural resources have been identified. It is estimated that NFS lands in Idaho may contain more than 200,000 cultural sites.

Another neon sign.

P. 258

6. Many undocumented cultural resources exist in roadless areas, where development has been relatively minimal. If the estimated site density for all forest lands were applied to the roadless areas, then about 62,000 sites would be expected.

I cannot believe this type of information is included in a document that will be released to the public.

7. Building roads and implementing management actions such as timber harvest may, at times, adversely affect cultural resources. *That's an understatement.*

P. 259

8. Prior to mining, cultural resources surveys would be conducted; if cultural resources are found, the appropriate mitigation measures would be applied.

What kind of mitigation could possibly replace what will be lost? How does one mitigate someone's belief? Someone's culture and beliefs, or the destruction of the burials of their ancestors?

The 1872 Mining Law is currently under review. Hopefully there will be some much needed changes to this outdated law.

9. Generally, newly constructed roads are not open to public travel; therefore, there would be still be a low risk of vandalism and looting.

As far as the tribes are concerned, that's a hollow promise. It is a well known fact that the USFS and other agencies have not protected the resources on the lands in their jurisdiction.. Will there be additional funding to provide for additional law enforcement.

P. 260

10. Finding cultural resources can also provide more opportunity to provide tourism, educational, and interpretive opportunities to the public regarding their heritage on NFS lands.

There are enough sites available to provide all that's needed. The federal agencies are mandated to protect site specific information. The state needs to educate themselves on the sensitivity of their recommendations.

"Their Hertiage," the non-Indian people have been in our homelands for two hundred years, you have enough for them to educate themselves on their brief history, Our people have been here for thousands of years. Our people struggle to maintain what we have left. Let us choose what we want to share.

The Shoshone-Paiute Tribes do not share in the importance of tourism. We support the importance of education, but allow us to be a part of the education. Any interpretive information should have the concurrence of the tribes..

P. 261

11. Currently lease applications have been submitted for geothermal exploration within 7,000 acres of the Peace Rock Roadless Area,

Is that near the Silver Creek Plunge? Hot springs are important areas to tribes. The tribes don't not support the destruction of these important areas.

3.14 Idaho and Affected Indian Tribes

Introduction

12. There are numerous Native American Tribes with "interests" in Idaho. Other tribes residing in other states also maintain tribal interests, including aboriginal, ceded, and treaty territories with the state.

Most tribal interests are legal interests.

Article VI of the US Constitution; "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any Thing in the Constitution or laws of any state to the contrary notwithstanding."

Many of their tribal lands and interests are adjacent to or within NFS lands.

I don't agree with that assessment, the NFS lands are within the tribal homelands.

Affected Environment

13. Forest Service strives to ensure that the rights and interest that Native American Tribes may have within Idaho's roadless areas are protected.

Those areas are protected because the area is roadless. That's all we're asking is the preservation of the sites, the environment and all resources. The resources have always done well on their own, its when people are brought into the picture that everything will

deteriorate in a very short time. That was a part of my message last week in DC. "It's not the resources that need management, it's the people that we must manage."

P. 264

14. Impacts to tribal Governments and tribal practices from resource management activities would be minimal because of the consultation requirements.

I don't agree with how that reads. It should read, "because the USFS is obligated by law to protect the inherent rights of Native Americans under the stipulations of the American Indian Religious Freedom Act (AIRFA) and other laws."

15. However, there is still some risk to sacred sites where American Indians conduct ceremonies that require privacy. If a road were built near such a site, the associated increase in visitation could make it impossible to conduct ceremonies there

This would be a violation of EO 13007 and AIRFA.

I was called to testify in an Oversight Hearing of the Sub-Committee on Natural Resources in Washington D.C last week.

This Oversight Hearing was in regard to ATV's and the lack of enforcement of National Parks, Forests, and Public lands. A lot of it was reminiscent of the discussion we're having today, the increasing loss of resources and the degradation of the environment at the hands of too many people on ATVs and the lack of enforcement.

I will remain a part of this issue into the future.

The SHOSHONE-BANNOCK TRIBES



FORT HALL INDIAN RESERVATION
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FORT HALL BUSINESS COUNCIL
 P.O. BOX 306
 FORT HALL, IDAHO 83203

April 7, 2008

RECEIVED APR 14 2008

Attn: Brad Gilbert, Team Leader
 Roadless Area Conservation-Idaho
 P.O. Box 162909
 Sacramento, CA 95816-2909

RE: PROPOSED IDAHO ROADLESS RULE DEIS - Shoshone-Bannock Tribes Comments

The Shoshone-Bannock Tribes (Tribes) have received and reviewed the Draft Environmental Impact Statement (DEIS) for the Proposed Idaho Roadless Rule (Proposed Rule) and hereby submit the following comments to the United States Department of Agriculture (USDA) and the Forest Service (FS).

The Proposed Rule is unnecessary in light of the flexibility and protection allowed by the 2001 Roadless Rule. During the final days of the Clinton administration, a management theme for every roadless area in the country, over 58 million acres, was initiated to protect these 'national treasures'. The provisions of the 2001 rule did not provide for permanent road building within Inventoried Roadless Areas (IRA) nor was there an allowance made for mineral exploitation, outside of the generally applicable mining laws. Every IRA receives a level of protection commensurate with the important functions that roadless areas provide to ecosystem health, biological diversity, watershed and recreational opportunities. It is clear that the changes sought in the Proposed Rule do not protect every roadless area; rather, the underlying intent is to enhance the economic opportunities of a select group of interests at the expense of the nation's roadless areas.

The proposed change in management of the national forest service lands, at the request of the State of Idaho, is an improper delegation of authority from the USDA. The National Forests were withdrawn from the States and maintained as federal property, under federal agency management. Property that is under the management of the federal government must be managed in accordance with the intelligible principles laid down in an agency's organic act. In the mandate that guides the forest system management, the National Forest Management Act, there is a requirement for the FS to manage the nation's forest to provide for multiple uses, sustainable in perpetuity. One purpose of federal management

provide for multiple uses, sustainable in perpetuity. One purpose of federal management over national forests is to avoid local interests irreparably damaging a resource that belongs to the citizens of the United States, in common. The Tribes are not aware of any express authority allowing the unelected officials of the USDA or the elected officials of the executive branch, to provide for State or local county management of national resources.

The designation of IRAs within a less protective theme than they currently receive is unacceptable management of unique resources and violates the mandates of the USDA to preserve the national forests' biological diversity and ensure a truly 'sustainable yield' of the resources within a forest ecosystem. Under the organic legislation and acts of Congress, the Forest Service must maintain biological diversity within any given forest system, refraining from approving those activities that will diminish the capacity of the system to maintain native species. The FS has an obligation to provide habitat for wildlife and watershed health. The management of entire roadless areas for one specific activity, phosphate mining in Southern Idaho as one example, diminishes the capacity of that roadless area to be utilized for multiple uses in a sustainable manner.

The Tribes utilize roadless areas for hunting, fishing, gathering, traditional cultural practices and ceremonial purposes. The IRAs represent the last intact habitat in the State, untouched by the development that has marked the past two centuries. From time immemorial the Shoshone and Bannock peoples utilize the forests and high sagebrush hills of the mountain west and Great Basin for subsistence. The Tribes hunt salmon and game; the Tribes gather medicinal plants for sustenance and ceremony. There is no part of the ecosystem that does not play a role in the holistic relationship of our ancestors through the present day. The roadless areas of Idaho are the last features that are still intact and functioning today, a reminder of the world that pre-dated the nation we live in.

The Tribes oppose development within an IRA because of the unique characteristics found in every one of the listed roadless areas in the State. These remaining parcels of forest provide countless opportunities for ecosystem sustainability, refuge for wildlife, rearing habitat for salmon and steelhead, solitude, botanical diversity and they hold the memories of the past generations for the future. The opportunities for exercising treaty rights, ceremony, recreation, watershed health, ecological diversity and wildlife habitat far outweigh the fleeting benefits that would be realized from the unscrupulous practices of mining interests and timber harvesting.

The DEIS released by the USDA falls short of the required analysis under the National Environmental Policy Act (NEPA) and fails to adequately discuss the impacts of the Proposed Rule. NEPA requires that an agency take a 'hard look' at a proposed action prior to making a decision and allowing for public comments to shape that decision. The Proposed Rule failed to incorporate *adequate* baseline information, such as maps for each roadless area in the State affected by the rule change or tribal ethnographic studies. The DEIS fails to analyze the direct, indirect and cumulative impacts to individual IRAs in the affected environment section. There was a lack of description of the foreseeable

impacts from mineral exploitation in Southern Idaho IRAs, in the region commonly known as the 'phosphate deposit region'; the DEIS is inadequate under NEPA.

The Tribes were not consulted in accordance with the government-to-government protocols laid down through various federal legislation and policy throughout the drafting of this document. None of the IRAs within the Tribes' ceded lands and aboriginal lands were given due consideration under the management designation by the State or FS. The Tribes maintain a strong cultural and Treaty interest in maintaining the character of the roadless areas and will object to any proposed rule that arbitrarily and capriciously designates large swaths of roadless areas in Southern Idaho as 'open for development'.

The delegation of management authority over federal lands to State governments will not be in the best interests of Tribes, the citizens of the United States and Idaho's roadless areas. This rule change is unnecessary given the protections and management direction provided by the 2001 Roadless Rule, already in place. The DEIS fails to promote biological diversity, sacrifices Southern Idaho IRAs to future development, endangers critical wildlife, anadromous and resident fish habitat, and fails to protect the trust resources of the Shoshone-Bannock Tribes. The DEIS falls short of the requirements of NEPA and fails to provide adequate baseline information to the Tribes to make an informed decision about the impact of the rule on individual Forests and IRAs.

The Tribes object to the Proposed Rule and request that the USDA deny the petition submitted by the State of Idaho. The Tribes demand that the mandates of the 2001 Roadless Rule be strictly adhered to as the only legally binding management mandate from Congress to the USDA. It is the responsibility of the USDA, through the FS, to manage these lands for every citizen of the United States of America, not simply one segment of the population or one particular set of special interests. This Proposed Rule fails to provide even the semblance of reasonable management and as such, is rejected by the Tribes.

The Tribes formally request that this comment letter be answered with a written response and hereby request further government-to-government consultations with the USDA. The response letter shall include a written explanation of the incorporation of the Tribes submitted comments, along with a page number where they can be found, as well as rationale for any comment not incorporated into the final document.

Conclusion

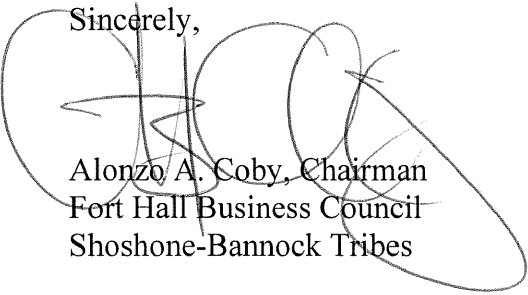
Because of the special relationship that exists between the United States government and the Shoshone-Bannock Tribes, recognized through the Fort Bridger Treaty of 1868, the Tribes request that the State of Idaho's petition be denied, in accordance with the above noted comments. In addition to these comments, the Tribes hereby incorporate by reference those comments submitted by the Greater Yellowstone Coalition, for the Proposed Idaho Roadless Rule.

The USDA is not required by statute or other legislative act to accept the petition of the State of Idaho as proffered. It is the sole responsibility of the USDA to manage the

nation's forests for every citizen and maintain those pristine roadless areas for generations to come. The petition by the State of Idaho usurps that responsibility so that mineral and timber development can occur on the few remaining roadless areas in the state. The FEIS should reflect the valid concerns of the Tribes, submitted in this comment letter, and further involve the Tribes in the decision making process.

Again, the Tribes expect the our Trustees at the Forest Service to uphold their trust responsibility, and utilize the highest standard in determining what are acceptable levels of management for Idaho's Roadless Areas. The Tribes look forward to continuing to work with your staff regarding this and other projects. If you have any further technical questions, please contact Claude Broncho at 208-239-4563 or at cbroncho@shoshonebannocktribes.com, or Yvette Tuell at 208-239-4552 or email her at ytuell@shoshonebannocktribes.com.

Sincerely,



Alonzo A. Coby, Chairman
Fort Hall Business Council
Shoshone-Bannock Tribes

Attachments: SBT Snake River Policy

CC: Bill Bacon, SBT Attorney's Office
Claude Broncho, SBT Fish & Wildlife Policy Representative
SBT Fisheries Department
SBT Tribal DOE/HeTO
SBT Land Use Department
SBT Land Use Policy Commission
Greater Yellowstone Coalition

I. Introduction

In the Fort Bridger Treaty of 1868 (Treaty), the Shoshone-Bannock Tribes reserved the right to hunt ‘on all unoccupied lands of the United States’.¹ The 1867 Executive Order established the Fort Hall Indian Reservation, and the Treaty affirmed the reservation as the permanent homeland of the Shoshone-Bannock Tribes (Tribes). Federal laws² provide for the practice of traditional cultural practices and ceremonies on federal lands and the protection of cultural/historical sites from undue degradation. Through these reserved rights the federal agencies must uphold their Trust Responsibility³ throughout the decision making process, when there is a potential to affect those rights. The Proposed Rule may have impacts on Treaty rights or traditional cultural practices, rights reserved in land cessation agreements. The Tribes object to the Idaho Roadless Rule (Proposed Rule) as submitted by the State of Idaho, in the Draft Environmental Impact Statement (DEIS), and further request that the petition be denied and the terms of the 2001 Roadless Rule⁴ continue to be implemented.

The original boundary for the Fort Hall Reservation has been modified through a series of land cessation agreements to its current size, which the Tribes reserved certain rights, in addition to those rights guaranteed by the Treaty, to ceded lands that remain part of the public domain⁵. Several of the Inventoried Roadless Areas (IRA) are within that original reservation boundary and thus subject to the terms of those particular cessation agreements. The Tribes continue to utilize the IRAs within the original boundaries of the reservation for Treaty Rights and traditional cultural practices. The Proposed Rule will impact Tribal rights and interests in those IRAs and does not adequately address the nature and scope of those impacts. The impacts to these rights were not mentioned or analyzed in the DEIS and as such, the Tribes find it insufficient and request that further consultation occur regarding this serious omission.

The Proposed Rule does not provide for project specific activities, but does provide a permissive atmosphere that would result in the implementation of a full range of activities allowed in any given management theme, impacting Tribal interests. There are many activities, road-building and mining, that would not be allowed under the current 2001 roadless rule. The Proposed Rule is an expansion of allowable activities that has the

¹Ft. Bridger Treaty, July 3, 1868, stating “...they shall have the right to hunt on unoccupied lands of the United States so long as game may be found thereon...” (Ft. Bridger Treaty, July 3, 1868, 15 Stat. 673)

² Native American Grave Protection and Repatriation Act (cite), American Indian Religious Freedom Act (cite), are two examples of federal legislation mandating land management agencies to provide access to sacred sites for ceremonial purposes.

³ Trust Responsibility is a term that has been coined to describe the unique relationship between the federal government and federally recognized tribes. The term entails an obligation to protect, preserve and give due consideration to the interests of tribes when making land management decisions.

⁴ In the DEIS the 2001 Rule is referred to as the ‘Clinton Rule’ and is one of the alternatives analyzed as the current baseline or ‘no action’ alternative.

⁵ “So long as any of the lands ceded, granted, and relinquished under this treaty remain a part of the public domain, Indians belonging to the above mentioned tribes (Shoshone-Bannock Tribes), and living on the reduced reservation, shall have the right, **without any charge therefore**, to cut timber for their own use, but not for sale, and to pasture their live stock on said public lands, and to hunt thereon and fish in the streams therefore.” (31 stat 672, Article IV)

potential to degrade the health of those fragile ecosystems.⁶ IRAs that are subject to the Proposed Rule are unique places that provide habitat for wildlife and plant communities, provide solitude for spiritual respite, and provide for Treaty resources and traditional cultural practices for Tribal members.⁷

The Proposed Rule does not prescribe nor does it specifically authorize any project within an IRA. The United States Department of Agriculture (USDA) indicates that there is no change in the physical environment because the Proposed Rule is programmatic in nature. However, theme designation and the scope of reasonably foreseeable actions that will likely occur within IRAs under the themes of General Forest Rangeland and Grassland (GFRG) or Backcountry Restoration (BCR), it is appropriate to request further NEPA analysis for every IRA containing GFRG or BCR, before a final decision is rendered. The DEIS failed to address Tribal impacts resulting from the change in management under the Proposed Rule and therefore, site specific impacts to each Forest and each roadless area within that Forest should be analyzed.

In terms of the adequacy of the analysis for each IRA, the Proposed Rule is lacking any depth or even a clear baseline for evaluating Tribal impacts within IRAs. Every IRA in Idaho needs further ethnographic and archaeological research that will focus on Tribal use as a whole. Evidence of Tribal presences is reflected in many IRAs throughout the state of Idaho and beyond its political boundaries. The DEIS uses language like: evidence of human activity is moderate, however there is no discussion of pre-historical or historical Tribal presence. It is the USDA's obligation to provide adequate information regarding Tribal uses, both past and present, so that a reasoned decision can be rendered.

Based upon this flawed analysis, the reader could easily imagine how the rule would describe the Grand Canyon, "dry vegetation, past human activity present, with a large canyon area"; far too simple of an analysis is given to each IRA to be considered adequate under NEPA. The Tribes oppose the notion that because an IRA has a viewshed that contains human development the value of an IRA is 'diminished' and will allow for further development in IRAs under the GFRG or BCR themes. IRAs retain their value to Treaty resources even when some evidence of human development is present.

The Tribes have a significant concern because the Proposed Rule involves lands within the aboriginal territories of the Shoshone and Bannock Peoples; who ranged throughout much of the western United States and Canada. The Caribou-Targhee National Forest (CTNF) provides unique opportunities for the Tribes, in terms of Treaty rights and the exercise of ceremonial activities. There are seven roadless areas that will be designated as GFRG in the Caribou portion of the CTNF that contain superfund sites due to mining

⁶ This plan allows for expanded mining activities in both the GFRG and the BCR themes, whereas the 2001 rule took a restrictive stance toward these activities.

⁷ See, e.g., Noss, R., Wuerthner, G., Vance-Borland, K., Carroll, C. 2001a. A Biological Assessment for the Greater Yellowstone Ecosystem. 137 p. Maps. Appendices. (Noting that the IRAs of Idaho are unique places that provide for biological diversity in Idaho.)

activities and other IRAs that fall within the boundaries of the original Fort Hall reservation at risk. Future mineral exploitation may further compromise ecosystem viability and biological diversity, as well as lead to further contamination of the Blackfoot and Salt River Drainages. Many of the other IRAs in the Caribou portion of the CTNF have been chosen as GFRG, leaving them open for different forms of development. The Tribes are concerned with every IRA in Idaho but oppose the weak protection that will be accorded to IRAs in the Proposed Rule just outside the reservation boundary and throughout Southern Idaho.

II. Preservation of Treaty Rights Off-Reservation and on Ceded Lands

The Tribes have established the Snake River Policy.

“The Shoshone-Bannock Tribes (Tribes) will pursue, promote, and where necessary initiate efforts to restore the Snake River systems and affected unoccupied lands to a natural condition. This includes the restoration of component resources to conditions which most closely represents the ecological features associated with a natural riverine ecosystem. In addition, the Tribes will work to ensure the protection, preservation, and where appropriate the enhancement of rights reserved by the Tribes under the Fort Bridger Treaty of 1868 (Treaty) and any inherent aboriginal rights.”

The Tribes drafted this policy because the Snake River Basin provides substantial resources that sustain the diverse uses of native Indian Tribes, including the Shoshone-Bannock. A natural riverine ecosystem provides for the continuation of the unique cultural heritage of the Shoshone and Bannock people. Utilizing fisheries or hunting and gathering areas allows for present day Tribal members to practice the traditional lifeway, reconnect with the cultural landscape, riverine environment and ancestral lands. The Tribes request that the FS take the Snake River Policy into consideration when drafting a decision on the Proposed Rule.

Article IV of the Treaty reserves the right to hunt on ‘unoccupied lands of the United States’, which provides for subsistence purposes. IRAs provide strongholds of biological diversity for native species, which supports the Tribes’ subsistence rights and policy. The Proposed Rule would affect Tribal rights by reducing the protections currently in place for IRAs, altering their natural condition and further diminishing biological diversity. IRAs contribute high quality habitat, consistently yielding strong, sustainable populations of native species. Removing protection from even one IRA diminishes the ability of native species to maintain current populations and genetic diversity by further fragmenting habitat. Executive Order 12898 requires that an analysis, under the ambit of Environmental Justice, be performed that specifically looks at the impact to Tribal subsistence rights by the Proposed Rule. In accordance with Executive Order 12898, the Tribes demand further analysis of the impacts to subsistence rights.

There are nine roadless areas that will be affected by the Proposed Rule that are within the ceded lands of the original Fort Hall Indian Reservation. These areas are: Toponce, West Mink Creek, Scout Mountain, North Pebble, Bonneville Peak, Elkhorn Mountain, Oxford Mountain, Deep Creek and a portion of Clarkston Mountain; each of these IRAs would be open to development by a designation as GFRG. These IRAs are critical to Tribal trust resources by providing for the survival of wildlife, ensuring maintenance of biological diversity, watershed health and preserving significant cultural sites. The 2001

Rule guaranteed that these areas would not see future development. The designation of GFRG in the Proposed Rule endangers the integrity of those areas for a myriad of ecological, historical and cultural components. The Tribes demand that the highest level of protection be provided for these IRAs within the ceded lands of the original reservation.

The Treaty right to hunt has been defined by the Idaho Supreme Court as including fishing.⁸ The Tribes harvest both resident and anadromous fish throughout the year. IRAs provide clean water and pristine habitat for quality fisheries that contribute to this subsistent right. The Tribes have an interest in preserving native trout species and anadromous fish populations, which have habitat within Idaho's roadless areas; including Endangered Species Act listed species Bull Trout, Steelhead, Chinook and Sockeye Salmon. Hundreds of stream segments in Idaho have been affected by various management activities and are currently listed as 'water quality limited or impaired' under the Clean Water Act (CWA)⁹. The Tribes oppose the Proposed Rule because of an increased potential for soil disturbing activities and contamination under the BCR or GFRG themes that may adversely impact trust resources or violate federal laws.

The Tribes have been utilizing the lands now comprising the IRAs for botanical gathering since time immemorial for ceremonies, subsistence and traditional cultural practices. There has been a substantial loss of habitat, since European contact, for native vegetation and an increase in noxious or invasive species. IRAs are the last intact habitat for native vegetation and present the best opportunity for successful gathering of native botanical resources. Road building activities increase the risk that invasive and noxious weeds would diminish the abundance of native vegetation that the Tribes rely on for ceremonies, subsistence and traditional cultural practices.

The risks to the Tribes rights and interests cannot be adequately assessed given the insufficient baseline data reflected in the DEIS. The management of Idaho's IRAs under the Proposed Rule may have direct, indirect and cumulative impacts to the rights and interests, guaranteed by Treaty and Federal Laws/Policies, as well as established policies of the Tribes. The Tribes cannot support or endorse the Proposed Rule and further request that the USDA deny the State of Idaho's petition and continue to manage the IRAs under the terms of the 2001 Roadless Rule. The Tribes expect that the FS will continue to consult so that management proposals include the Tribes' concerns and issues.

III. General Comments

The Tribes will provide both general and specific comments to address fundamental flaws with the Proposed Rule and the rationale behind the DEIS management themes. The Tribes remind the USDA of their statutory mandate to maintain the National Forests

⁸State v. Tinno, 94 Idaho 759, 497 P.2d 1386. (1972) (The Idaho Supreme Court held that the right to fish was expressly reserved by the Shoshone-Bannock Tribes under the Fort Bridger Treaty of 1868.)

⁹ 2008 CWA Idaho Draft Report can be accessed at http://www.deq.state.id.us/water/data_reports/surface_water/monitoring/integrated_report_2008_sec5.pdf.

in a sustainable manner in perpetuity for Tribal members using the Forest, taking into consideration the impact on Treaty resources, Tribal subsistence and impacts to traditional cultural practices.¹⁰

1. Cultural Resources

The DEIS does not provide sufficient baseline information regarding Tribal cultural resources in IRAs. Not only are these our aboriginal lands but these IRAs continue to provide cultural identity to present day Shoshone and Bannock people. The FS should contract with the Tribes to develop ethnographic studies, which will provide adequate baseline information for analysis. The Tribes and FS have limited ethnographic information that can be used to evaluate the direct, indirect or cumulative impacts to cultural resources within IRAs, as much of the studies have been conducted along watercourses.¹¹

Cultural resources, as narrowly defined in the DEIS, are “historic and archeological sites, historic structures and buildings”. The Shoshone Bannock Tribes expand upon this definition of cultural resources and include all elements of mind, spirit and physical being; tied to the physical landscape. Examples include archaeological sites, historic sites, traditional cultural practices, spiritual beliefs, sacred landscapes, intellectual property, subsistence resources, language and oral tradition, place names and tribal cultural geography.

The DEIS fails to provide consideration of significant cultural information necessary for NEPA compliance. A cursory review of other ethnographic and archaeological literature, not included in the DEIS, demonstrates the significance of IRAs to the Shoshone and Bannock people. The lands and resources within the IRAs are valuable portions of the cultural landscape of the Shoshone and Bannock people. Tribal cultural landscape boundaries are more fluid than conventional land survey demarcations; often known by Tribal place names, food resources and other landscape features.

Intrinsic to the relationship between Tribal people and the natural environment is the simple desire to protect, preserve, and where necessary the enhancement of the component features of the natural landscape. From this relationship, cultural heritage and lifeways are defined for Tribal people. Not included in the DEIS is the empirical data from ethnographic and archaeological records documenting Tribal procurement areas and landscape attributes for the location of residential camps. Resource areas and the spatial distribution of camps characterize the land use patterns of the Tribes, showing that Tribal use was present in virtually every IRA.

¹⁰ 16 USC 1600 § 2(6) (the Forest Service, by virtue of its statutory authority for management of the National Forest System, research and cooperative programs, and its role as an agency in the Department of Agriculture, has both a responsibility and an opportunity to be a leader in assuring that the Nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity;”)

¹¹ *The Rivers and Fisheries of the Shoshone-Bannock Peoples*, Albers et al. 1998. The Rivers and Fisheries Report focuses on the Tribes’ utilization of watercourses in Idaho and provides valuable ethnographic data from Tribal members. However, this report does not include data that can be utilized for accurately evaluating impacts to cultural resources within IRAs.

The following are examples of existing ethnographic data that was not included in the DEIS:

In the central Idaho mountains, Shoshone people identified themselves as *Tukadeka* (Sheepeaters) and *Agaidika* (Salmon Eaters). These Tribal bands utilized the mountain sheep, salmon as primary subsistence resource¹². Historical accounts by Lewis and Clark describes procurement of salmon by Shoshone people occurring on the Salmon, Lemhi, Boise, Payette, Weiser, Snake Rivers in Idaho. The Virginia City Treaty reserved a homeland in the Lemhi River Valley for the Shoshone, Bannock and Sheepeaters people in Central Idaho. This reservation was eventually terminated and the Indian residents removed to the Fort Hall Reservation.

The Tribes retain significant ties to the Lemhi Valley and Central Idaho, continuing to utilize these areas for subsistence and traditional cultural practices. The Tribes consider all lands within the original boundary of the Lemhi Valley Reservation as significant and valuable. The Indian residents of the reservation established homesites, ranches, schools, continued social and economic trade which contributed to the historic fabric of the Salmon region. In fact, the Indian cemetery remains important to the families of the former residents and continues to be a focal point. Many of the place names for streams and mountains are reflective of the presence of the Indian people. The Lemhi Valley is also nationally significant in that it was the birthplace and homelands of Sacajawea. The recently established national trail for the Lewis and Clark Expedition traveled over the Bitterroot Mountains into the Agency Creek IRA and continued westward. This is an important Tribal historical area, and must be protected from any further developments.

The Cache Valley Shoshone called themselves *Pangwiduka*, and Tribal oral history identifies the Bear River area in southeastern Idaho, as a significant trading rendezvous and resource procurement area for various bands of Shoshone and Bannock peoples. The foothills and mountains surrounding the Bear River drainage, in the Caribou portion of the CTNF provided subsistence opportunities for the bands of the Shoshone and Bannocks of this area. It was also a major transportation route for historical trade for Indians and trappers. Bear River drainage was considered a major subsistence fishery for Bonneville cutthroat trout.¹³ Due to the extremely limited Tribal ethnographic information, the Tribes request that additional studies be completed to determine impacts to Tribal historical use areas, from which further analysis can be completed.

Clark maps common resource areas utilized by Shoshone and Bannock people and documents the importance of riverine resources, and the surrounding mountains, which includes a high density of known Shoshone and Bannock campsites¹⁴. The spatial distribution of these camp locations characterizes the land use patterns for tribal people.

¹² Walker, D.E. 1993 Lemhi Shoshone-Bannock Reliance on Anadromous and Other Fish Resources. Northwest Anthropological Research Notes Vol. 27 (2), pp. 215-50.

¹³ Albers, Appendix A-161.

¹⁴ Clark, S. F. 1986, *Nineteenth Century Shoshone-Bannock Riparian Adaptation*, unpublished Master's thesis, Idaho State University, Pocatello, Idaho.

Moreover, Clark and Steward's studies highlight the significance of riverine habitat for subsistence and campsite locations¹⁵.

The absence of baseline ethnography in the DEIS, fails to indicate the importance of riverine resources and their Tribal significance as cultural properties. Tribal identity is still tied to the riverine environment and to the areas within the surrounding IRAs. Tribal knowledge and stewardship of traditional cultural practices, such as hunting and gathering, is privileged information and remains the responsibility of present generations of the Tribes to continue the unique heritage of the Shoshone and Bannock people.

Persistent in our Tribal teachings is to return to our aboriginal resource areas to continue the rich heritage of the Shoshone and Bannock peoples. Tribal identity continues to be defined by practicing traditional lifeway, regardless of the modern reality of current land management. Traditional cultural practices, which mirror the images of our ancestors hunting and gathering in the same location as our ancestors, have remained for millennia. During the early reservation days when ration food was scarce, Shoshone and Bannock people left the Fort Hall Reservation and returned to aboriginal lands to supplement food resources¹⁶.

Lilljeblad's research indicates that the Shoshone and Bannock cultures is at least 8,000 years old in their aboriginal range. Research shows salmon is a significant primary resource along with terrestrial wildlife, resident fish, roots, berries and other botanical resources. Lilljeblad states, "A culture existence is dependant on the continuity of interconnected knowledge, beliefs, conventional behavior and technical practices"¹⁷. Continuation of cultural practices in modern day, requires "the use of technical innovation combined with essentials of own aboriginal tradition"¹⁸. This tradition Lilljeblad speaks of is the current Tribal exercise of Treaty rights and traditional cultural practices; including the use of riverine resources, which are included in the IRAs.

The archaeological record illustrates the aboriginal lands of the Shoshone and Bannock peoples. Site 10BK26 (Wahmuza Site, located on the Fort Hall Reservation) provides scientific evidence of continual occupation of the Shoshone and Bannock people for the past 4,000 years in the Fort Hall Bottoms. The Wahmuza Site is a significant site in many ways for the Shoshone and Bannock people. Holmer¹⁹, utilizes the direct historical approach and the artifact assemblage from 10BK26 identifies specific artifacts as Shoshone. The research goal was to preserve and supplement the archaeological and anthropological research of traditional Shoshone knowledge providing empirical basis for

¹⁵ See, Clark, 1986. and Steward, Julian, 1938, *Basin-Plateau Aboriginal Sociopolitical Groups*. Smithsonian Institution Bureau of American Ethnology Bulletin No. 120. Government Printing Office, Washington, D.C.

¹⁶ Lilljeblad, Sven, 1972, *The Idaho Indians in Transition, 1805-1960*. Idaho State Museum. Pocatello, Idaho

¹⁷ id. at pg. 79

¹⁸ id. at pg 15

¹⁹ Holmer, Richard N. 1986a, Excavation at Wahmuza. In *Shoshone-Bannock Culture History*, edited by R.N. Holmer, pp. 39-204. **Swanson-Crabree Anthropological Research Laboratory Reports of Investigations 85-16**. Idaho State University, Pocatello.

Tribes presence in this region²⁰. The Wahmuza knife/projectile point artifact identified at 10BK26 is associated only with the Shoshone people. The spatial distribution of the Wahmuza point demonstrates the importance of riverine environments in central and southeastern Idaho to the Shoshone and Bannock people. The Wahmuza spatial distribution indicates Tribal presence in the central mountains and rendezvous areas of Bear River and Camas Prairie²¹.

Archaeological and ethnographic research documents the aboriginal land use of the Shoshone and Bannock people. Research provides an interpretation of land use patterns and supports Tribal oral history. Every IRA in Idaho needs further ethnographic and archaeological research that will focus on Tribal use as a whole. In order for the USDA to make a reasoned, final decision, an adequate baseline for ethnographic information must be established for analysis and determination of appropriate mitigation.

2. Special Plan Areas around Watercourses in IRAs

The Proposed Rule fails to disclose the extent of CWA §303(d) streams/rivers in the IRAs and the impact of additional soil disturbing activities around these sensitive watercourses.²² This Proposed Rule must institute high levels of protection and management of every watercourse originating or flowing through an IRA. Some watercourses are designated as 'forest special plan areas', not subject to the requirements of the roadless rule, because of other federal legislative protection. A purpose of the Proposed Rule is to protect maintain a healthy watershed in IRAs. It is reasonable to request that all riparian areas in an IRA be given the highest protection. The 2001 Rule protects watercourses and is the Tribes preferred management alternative.

Healthy riparian areas must receive the highest protections because of the vegetative diversity, terrestrial and aquatic species use and water quality that support sustainable ecosystems within an IRA. Since a healthy riparian area is the keystone of any functional habitat in an ecosystem, it is essential that every watercourse originating or flowing through an IRA be given the highest priority for protection. This will promote the purposes of protecting water supplies and providing essential habitat for terrestrial and aquatic species.

All perennial and ephemeral streams must be protected from the impacts of development by designating every watercourse within a roadless area under a restrictive management protocol. While the Proposed Rule focuses on those corridors eligible for designation under Wild and Scenic River legislation, there is an abdication of responsibility for the management of smaller watercourses. The Tribes demand that the USDA protect resident and anadromous fish habitat by providing for restrictive management around

²⁰ Wright, Steven E. N.D., *The Spatial and Temporal Distribution of the Wahmuza Lancelot*. Idaho State University Pocatello, Idaho.

²¹ Wright - No Date

²² Draft Integrated report from Idaho Department of Environmental Quality regarding CWA § 303(d) listed streams in Idaho. The report lists the streams in Idaho that are listed in the non-attainment for various reasons. The report can be accessed on-line and needs to be included in the analysis so that each roadless area receives due consideration prior to designation.

http://www.deq.state.id.us/water/data_reports/surface_water/monitoring/integrated_report_2008_sec5.pdf

every watercourse. Because the Proposed Rule fails to provide adequate protection of watercourses in IRAs, the USDA should deny the State of Idaho's petition and implement the protections of the 2001 Roadless Rule.

3. Sacrificing the Caribou-Targhee National Forest (CTNF)

The CTNF is heavily relied upon by the Shoshone-Bannock Tribes for subsistence hunting/gathering and traditional cultural practices. The Proposed Rule designates vast tracts of the CTNF as GFRG theme, allowing for the further degradation of the area known as the phosphate deposit region, as well as multiple levels of development activities permitted in the GFRG theme. Mining phosphorous is a destructive activity that permanently modifies the landscape and may adversely impact watersheds with toxic levels of selenium and other contaminants, poisoning fish and wildlife.²³ It has been demonstrated that the selenium contamination increases the risk of permanent deformities or genetic mutations, which causes mortality among the genetically distinct segments of resident salmonoids.

The CTNF areas provide to the diverse Idaho's forestlands because they exhibit all of the natural features necessary for subsistence resources, which are becoming increasingly rare in Southern Idaho. The woodlands, shrub-steppe and aspen-conifer plant communities provide key habitat for wildlife and allows for a wide range of botanical diversity. The Proposed Rule designates only a fraction of the lands in the CTNF under more protective themes than BCR or GFRG, and does not justify the impacts on the Caribou portion. The Tribes demand that a separate EIS be developed specifically for the Caribou and every roadless area within the Forest to discuss the actual and foreseeable impacts from the proposed rule to Tribal rights, resources and traditional cultural practices. The IRAs within the Caribou section are held in highest regards by the Tribes due to the significant ties to Tribal rights, resources and history.

It is unacceptable to the Tribes that the USDA has chosen to sacrifice these lands to the mineral industry because of a known phosphate deposit. The IRAs surrounding existing mines provide a necessary buffer between these mining activities and the wildlife that still utilize these areas. Allowing for further mineral exploitation of these roadless areas has a risk of irretrievably damaging the ability of fish, wildlife and plants to survive in perpetuity.²⁴ Although the rule characterizes the development in terms of distant future, downplaying the significance of activities as uncertain, the Tribes see it another way. The impact of this management direction will be contamination on Idaho roadless areas

²³ As states above in footnote 6, the IDEQ has begun a draft integrated report on watercourses that are in non-attainment. Those streams already contaminated with Selenium are: Sage Creek, Pole Canyon Creek, State Land Creek, several stretches of the Blackfoot River, Goodheart Creek, Dry Valley Creek, Chicken Creek, Maybe Creek, Spring Creek, Rasmussen Creek, upper Angus Creek; over 100 miles of watercourses presently contaminated with Selenium as a result of mining activity. This information must be included in the environmental documents to allow for an informed decision.

http://www.deq.state.id.us/water/data_reports/surface_water/monitoring/integrated_report_2008_sec5.pdf

²⁴ Van Kirk, R. W. and S. L. Hill. 2007. Demographic model predicts trout population response to selenium based on individual-level toxicity. *Ecological Modelling* 206: 407-420.

in the CTNF for generations to come.²⁵ For more than 50 years there will be mining and further degradation upon the lands that the Shoshone and Bannock peoples still call 'home'. It is careless to commit resources and lands to this level of development for such a long period of time, without fully considering the impact that it will have on future generations.

The Tribes' aboriginal lands have been under our careful stewardship from time immemorial. Although Tribal Treaty rights, and traditional use areas extend throughout public lands managed by the USDA, the Tribes have a particular concern with the CTNF due to the Proposed Rule's lax and irresponsible management themes. The Tribes strive to protect the lands of our ancestors because of our traditional and treaty connection to the lands. The short-term profit of mineral extraction does not outweigh the needs of the entire Southern Idaho ecosystem, which provides for our subsistence rights. Southern Idaho contains vast and abundant ecological resources. Today, mineral exploitation, road building and timber harvests compromise all but these last few roadless areas. The Tribes cannot support this level of development to occur on these culturally sensitive lands.

4. Tribal Anadromous Fish Restoration Efforts

The Shoshone-Bannock Tribes are actively engaged in restoration efforts for anadromous fish throughout the Columbia River Basin with particular emphasis on the Snake River and its tributaries. Water diversions, hydroelectric facilities, mining, logging, livestock/agriculture, municipalities, sedimentation, commercial fisheries have played a significant role in reducing anadromous fish populations.²⁶ The Snake River Spring/Summer Chinook Salmon were listed under the ESA as threatened in 1992 and an emergency re-classification was issued in August 18, 1994, expiring twelve months later; the Spring/Summer Chinook are still listed as threatened.²⁷ In addition, Sockeye Salmon were listed as endangered in 1992 and Steelhead are listed as threatened in 1997, under the ESA. The further deterioration of critical habitat along watercourses resulting from the implementation of the Proposed Rule would only serve to frustrate these efforts and the immense amount of money the Tribes have put into these projects. The Proposed Rule falls short of enhancing the ability of anadromous fish to expand into historic watersheds because of increased soil disturbing activities permitted in the GFRG and BCR management themes.

The Bannock and Shoshone peoples hunted anadromous fish on the numerous watersheds throughout the anadromous fish historic range. Fishing traditions continue today because of the immense amount of money and manpower expended by the State, the Tribes and Federal Agencies. Harvest of ESA listed species is reserved by Treaty for the Tribes and

²⁵ Skorupa, et al. August 2002. Reconnaissance Survey of Selenium in Water and Avian Eggs at Selected Sites Within the Phosphate Mining Region Near Soda Springs, Idaho— May-June 1999. (Dr. Skorupa noted that the "Idaho phosphoria region presents the potential for ecotoxicological risks to breeding water birds that equals or exceeds any region, and source of selenium previously reported in the scientific literature.")

²⁶ Draft Shoshone-Bannock Tribal Resource Management Plan, 2007.

²⁷ 57 Fed Reg 14653 (April 22, 1992) and corrected 57 Fed Reg 68543 (June 3, 1992) (The Spring/Summer Chinook are still listed as threatened species under the ESA.)

affirmed by Congress so that the Tribes can continue to harvest listed anadromous fish.²⁸ Projects to enhance the watersheds and critical habitat will continue until the runs of anadromous fish are restored to conditions closely representing historic levels. The protection of more anadromous historic watersheds is necessary to realize that goal of recovery and allow the Tribes to continue traditional cultural practices.

The Tribes are concerned that the failure to protect every watercourse in IRAs will result in more roads, increased sedimentation from mineral or timber activities and the eventual loss of critical habitat for anadromous fish. Most of the Tribes harvest of anadromous fish occurs in or near IRAs. IRAs often contain the tributaries that provide anadromous fish with spawning and rearing habitat, essential to the life cycle of these trust resources. The Tribes require that every stream, within the evolutionary significant units or with the potential to support anadromous fish, be protected from soil disturbing activities. It is not clear what level of protection the FS expects to provide these watersheds, but the Tribes suggest leaving them in their natural, riverine state. The Tribes further oppose any activity that alters the existing natural features of the riverine ecosystems in IRAs, consistent with Tribal policy.

5. Geothermal Development

The Proposed Rule supports 'open and unrestricted' Geothermal Exploration and Development opportunities on 7% (630,000 acres) of the roadless area in the GFRG theme, 66% of which is in Southern Idaho. Those lands open for geothermal development are environmentally sensitive and culturally significant lands for the Tribes. Idaho has high potential for geothermal development, in terms of potential sites for facilities. Conversely low is the capacity of Idaho's electrical infrastructure to deliver power from the facility. This fact evidences the probability that more transmission line 'right of ways' and easements will be necessary through the roadless areas to allow for this type of energy development. The Tribes oppose the permissive management in GFRG IRAs for the geothermal development Rule based on the following reasons:

- The language in the DEIS, "open and unrestricted", should never be used in connection with exploration or development of energy projects on any lands, especially the IRAs of Idaho.
- If energy developers are interested in geothermal power exploration and development, there are many other locations that are not located within the IRAs that would pose significantly less threat to the environment than these lands.
- Exploration and Development of geothermal power is destructive and detrimental to the environment in IRAs. It would require building new roads that would pose a threat to wildlife access and migration, increase sedimentation along watercourses and other associated impacts. It would require permanent construction of buildings and transmission lines that would pose a threat to the flora and fauna in the IRA.
- Exploration of geothermal potential in these areas would require multiple test drill sites, which have negative environmental impacts in the IRA.

²⁸ 50 CFR 223 (July 10, 2000) (Allows a Tribal government to submit a Tribal Resource Management Plan with the intent of exempting the Tribes' harvest of protected species from the ESA).

- Development of geothermal power would require a building and for security reasons it would require fencing and 24 hour surveillance which is harmful to wildlife access, wildlife migration and movement, and would reduce the general public's access to trails and reduce scenic quality in the IRA.
- Development of geothermal power, within IRAs, would also allow for surface occupancy on lands that the Tribes have reserved hunting and gathering rights on, according to the 1868 Fort Bridger Treaty. The Tribes oppose any action that may impact Tribal rights to unoccupied lands within the national forest system, especially IRAs.
- There are no scientific studies included in the DEIS that have indicated the effects of geothermal power on IRAs or that would support "open and unrestricted" geothermal exploration and development on these lands.

Based on these reasons, the Tribes oppose geothermal exploration and development within IRAs. The Tribes also oppose any energy development in these lands based on the environmental sensitivity and cultural significance of these areas. Furthermore, it is irresponsible and unjust to offer the Tribes and the public's resources to be sold to the highest bidder for geothermal energy development.

6. Mineral Development

The proposed Rule would allow for the possible exploitation of minerals and development of new mineral sites on all 609,000 acres under the GFRG classification.

The CTNF in Southern Idaho are the target for mineral exploitation. The maps provided reveal that one section of the Caribou portion of the CTNF will be opened for mineral exploitation and associated road building. In spite of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) remediation efforts and contaminated watersheds, this proposed rule will allow for future expansion of phosphate mining activities for generations to come.²⁹ Further specific concerns about the exemptions made in the DEIS for the known phosphate deposit area are noted below in Section VI.

In addition, the Tribes are concerned about the exploitation of common, saleable minerals that may be extracted within IRAs, in connection with other approved activities. This broad exception for mineral exploitation may lead to an increase in sedimentation and other associated detrimental impacts to water and the ecosystem. The Tribes also have concerns with air quality, wildlife habitat, botanical resources, ineffective remediation, damage to aquatic resources, and adverse impacts to cultural resources; all of which are associated with mineral extraction. The Tribes request that the USDA deny the Proposed Rule and leave the protections of the 2001 Rule in place.

7. Biological Diversity

²⁹ There are dozens of retired mines and at least three active superfund sites declared to be a public health emergency that have contributed to the contamination of the Blackfoot and Salt River drainages.

Among the National Forest Management Act (NFMA) substantive requirements is the duty to provide for the diversity of plant and animal communities.³⁰ The Proposed Rule does not provide the same level of protection for various plant and animal communities that will be needed to promote biological diversity among Idaho's forests. The Proposed Rule takes an approach that does not promote the preservation of unique communities of native plants and animals throughout Idaho, especially by choosing to sacrifice Southern Idaho's high sagebrush hills and the unique aspen-conifer interface. The Tribes rely on these unique resources for subsistence and traditional cultural practices.

One of the principal missions of the national forest system is to provide for biological diversity within all forestlands under the FS management. The Proposed Rule limits the diversity in vegetative types and wildlife habitat by allowing for development on roadless areas in Southern Idaho. There is noted risk, page 15 of the DEIS, to habitat or aquatic organisms under the GFRG theme and a potential risk to wildlife noted in GFRG theme, page 16. At issue is the 66% (398,000) acres of GFRG in the CTNF, with over 12,000 acres of known, unleased phosphate deposits at risk for future mineral exploitation and the rest open to various forms of development activities.

The CTNF, particularly the Caribou portion of the forest, has some of the last remaining IRAs that demonstrate the high sagebrush and aspen interface, as well as some prime examples of the aspen/conifer woodland type. These areas provide for significant opportunities for Tribal subsistence resources. By neglecting to provide for specific protections in these areas, the Proposed Rule is placing the diversity of Idaho forests at risk. These IRAs provide some of the few remaining strongholds for plant and wildlife species that are not found in other forest systems.

It is the inherent responsibility of the FS to provide adequate protections for biological diversity in their management decisions. By requiring that an area have "adequate vegetative screening" the FS is placing a condition on high sagebrush/aspen or aspen/conifer types that cannot be directly met. The fact that some developments might be seen from some part of the roadless area does not reduce the importance of the roadless area or diminish the importance of the IRA as habitat for species that have specific needs. The IRAs of Southern Idaho would be diminished by the exclusion of this essential vegetative type and the Tribes will take all measures necessary to protect it.

The Tribes demand that the FS re-evaluate the importance of the CTNF lands by performing an individual environmental analysis for each IRA in the CTNF. This demand is in line with the FS mandate in NFMA to provide for biological diversity. The preservation of habitat is a long-standing policy of the Tribes and the Proposed Rule will eliminate key habitat for species that Tribal members rely upon for subsistence, as guaranteed by Treaty.

8. Designation of Management Themes

The maps provided do not clarify the management themes because they are not produced to scale and are only available at the Forest level. Only by producing scaled maps of

³⁰ See 16 U.S.C. § 1604(g)(3)(B)

each IRA with vegetative types, watercourses and critical habitat areas; layered with management themes, are the Tribes able to ascertain the direct, indirect and cumulative impacts from the designation of management themes. The insufficiency of the maps cannot be understated because it is truly the only way to effectively analyze the impacts to significant IRAs and critical habitat.

The Tribes are concerned with the designation of less protective zones adjacent to or subsumed by more protective zones. For example, in some of the IRAs near Soda Springs, the less protective designation runs through the heart of an IRA, with the more protective designation at the outskirts of the IRA. This allows for an activity to take place in the middle of an IRA that will destroy the characteristics of the entire area and eliminate acres from the roadless category, increasing the difficulty of managing it as a roadless area or reducing it in size so that it no longer qualifies as an IRA. A general problem arises because not every management theme is appropriately located or planned out in the forest.

The Tribes recommend that consistent management be applied by only designating less protective zones at the fringe of an IRA and cannot be subsumed within a more protective zone. The GFRG them cannot be adjacent to a WLR or Primitive designation and should only be adjacent to BCR. Further, the change in designation, as noted below in specific objections, can only occur through the formal rule making process. The Tribes prefer management occur consistent with the terms of the 2001 Rule because it does not compromise any IRAs.

9. Fuels Management

Under the Proposed Rule, timber harvest is directly permitted in Primitive and BCR themes to reduce the risk of wildfires and is open in the GFRG theme. Under the 2001 Rule no timber harvests, were allowed unless the threat was immediate. Under the Proposed Rule, roughly 4 million board feet of timber on about 800 acres will be harvested. Compare that with about .5 million board feet on about 100 acres under the 2001 Rule. The Tribes rely on forest systems for subsistence and timber harvests within an IRA would impact Tribal resources.

The Tribes recognize the need for natural fire regimes and request that fuel treatments, when there is an immediate threat to life or structures, within a Wildland/Urban Interface (WUI) be coupled with restraint. Reducing high-density vegetation, when a threat is merely imminent, may result in a loss of valuable habitat for Tribal subsistence resources. There should be no permanent road building associated with these activities.

The Tribes object to the characterization of danger to forest health posed by wildfire. Idaho's forests are sensitive and a wildfire can immediately impact an area. But many conifer types require a natural fire regime to regain the attributes associated with a healthy ecosystem. The Tribes recognize the vital role that fire plays in sustaining a healthy forest.

The Tribes have researched the importance that both the eco-tourism and the timber industry play in Idaho's emerging 21st century economy.³¹ Timber, as an industry, has provided fewer jobs than historic levels. Revenue from eco-tourism (hunting, fishing, recreation) has created a sizable industry that positively impacts tribal communities with IRAs nearby. The trees in Idaho's IRAs are worth more as an inseparable part of the eco-tourism industry than for the short-term, non-sustainable timber industry's profit.

10. Resident Fish Populations

IRA watersheds provide critical habitat for ESA listed and Federal/State recognized sensitive resident fish species, such as native Cutthroat Trout species and Bull Trout. Negative effects for native trout at life history stages include impacts from increased sedimentation from soil disturbing activities that results in reduction of spawning substrate, connectivity for migration due to barriers and possible decline in water quality from additional contaminants above background levels. Numerous recovery and restoration efforts for native fish species occur within IRAs, many are federally funded.

The Tribes do not agree that the Proposed Rule would protect against the proven impacts from phosphate and other mining activities. Elevated levels of Selenium (Se) concentrations in surface water, ground water or run-off borne substrate will lead to an increased bioaccumulation of Se in resident fish populations. Several streams in the Salt and Blackfoot River drainages are at or exceeding EPA standards for Se concentration for fish and would likely increase with the proposed actions for mineral exploitation in the phosphate deposit region of the CTNF. Peer-reviewed publications find that population-based modeling for cutthroat trout with Se concentrations approaching 17ug/g will cause a decline in fish stocks. The Proposed Rule states that there is no demonstrable hazard to human health through consumption of fish in the affected streams but has yet to proffer evidence to that effect. The DEIS fails to analyze this information and as such, has reasoned to a flawed determination.

The impacts to fish in streams with Se concentrations higher than threshold levels will result in deformities and an increase in mortality rates, resulting in the decline of the resident, native trout populations. The building of roads or other soil disturbing activities

³¹ The Wilderness Society reports that, "*Although 98% of the forest identified as needing treatment within the Wildland Urban Interface (WUI) in Idaho are outside roadless areas, there are still a small number Roadless Areas near homes and communities that may warrant concern. That is why the prescriptions of the 2001 Roadless Area Conservation Rule allow for flexibility for human health and safety. According to fire officials, forest-thinning and prescribed fire projects like the one near Silver Creek Plunge resort were critical to the protection of homes and communities. The Idaho Statesman reported in October, 2006 that the thinned area slowed the blaze, and gave firefighters the flexibility that they needed to save every structure in the 45,000 acre Rattlesnake Fire area. Similarly, near Yellow Pine, a fire burned across many acres, but all nearby buildings escaped the blaze because thinning and prescribed fire created a buffer in the Wildland-Urban Interface. It is important to note that neither of these thinning and prescribed burning projects required any road construction, and both of these projects were within the guidelines of the 2001 Roadless Conservation Rule. Communities and infrastructure were well-protected from fire in Idaho this past year —without veering from the guidelines of the 2001 Rule, and without the construction of a single road.*"

<http://wilderness.org/Library/Documents/upload/Roadless%20background%20TWS%20Anderson%20Jan%202008.pdf>

also destroy critical habitat for resident fish and reduce the ability of population to recover or maintain equilibrium. A diminished population of resident fish leads to a loss of Treaty resources and less opportunity to engage in the traditional cultural practices of harvesting resident fish by Tribal members.

11. Wildlife Habitat

Idaho's Roadless Areas make up some of the last intact areas of Northern Rocky Mountain habitat in the continental United States. The importance of intact habitat cannot be understated for the biological communities that depend upon the roadless areas for every life stage. There are needs for big game and upland bird species, as well as special status species that can only be satisfied through non-fragmented habitat, such as the IRAs subject to this proposed rule.

A. Terrestrial Wildlife Habitats and Species

The 2001 Roadless Rule has been and will be the most beneficial to wildlife species in the existing IRAs. Idaho Roadless Areas provide the following benefits for Wildlife:

- Dispersal Corridors
- Connectivity between large blocks of habitat
- Travel Corridors
- "Islands" of refugia
- Habitat diversity and complexity
- Old growth forests
- "Natural" levels of snag and down woody debris components within forested habitats across large areas
- "Source" habitats and "strongholds" for sensitive species
- Security and seclusion during incubation, hatching, or birthing and rearing of young
- Reduced big game and furbearer vulnerability during hunting and trapping seasons as a result of limited access.

The Proposed Rule would negate the above positive effects on terrestrial wildlife species and habitat by increased road building and mining. The Proposed Rule would increase fragmentation for most species and ultimately result in a decrease in biodiversity for terrestrial wildlife species. The benefits of complete, roadless habitat cannot be understated and as such the Tribes request that the USDA take affirmative steps toward the conservation and protection of roadless areas by following the mandates of the 2001 Rule.

B. Upland Birds

Sage Grouse and Sharp-Tail Grouse are found throughout the CTNF, in particular they are found to thrive in IRAs. The reasons for this association between these upland birds and roadless features include, but are not limited to: the presence of botanical native species, minimal human interference, healthy watershed conditions (with the exception of the phosphate deposit region) and the presence of genetic diversity among leks.

Sage grouse is significant in the Shoshone and Bannock cultures. The tangible significance of sage grouse is illustrated in Tribal subsistence, traditional dance and ceremonial songs. The Tribes have spiritual beliefs associated with sage grouse that are reflected in traditional dance and songs. Traditional dance imitates the dance that the sage grouse performs during the mating season. The dancers' regalia utilizes most parts of the sage grouse in the headdress, bustle and whistle. The sage grouse is also a traditional subsistence resource and is a part of the traditional diet of the Shoshone and Bannock peoples. On a broad cultural scale, the sage grouse is a part of the web of life and plays an important role in maintaining the balance of life. Specifically, the sage grouse's spiritual significance is recognized in the songs sung in traditional ceremonies, which speak of the power the sage grouse possesses.

The Tribes are concerned that the activities allowed under the GFRG and BCR categories will diminish the ability of these upland species to survive and threaten the integrity of contiguous habitat necessary for various life cycles. The USDA has not fully considered programmatic goals and objectives within the proposed rule for the successful preservation and eventual restoration of upland bird habitat. Nor has the USDA implemented, at the programmatic level, proposed management areas for known leks within the IRAs that are the subject of the Proposed Rule. The Tribes are opposed to the Proposed Rule because of the potential impacts to terrestrial wildlife, which comprise a portion of our spiritual and subsistence rights; these impacts are not evaluated in the DEIS.

IV. Specific Rule Oriented Comments

1. Taken from the rule overview, which provides, in part, the rationale for the rule itself: *During his presentation to the RACNAC, Governor Risch expressed the need for stewardship of Idaho Roadless Areas focusing on limited forest health activities. Clarifying what stewardship means is vital to understanding the petition and subsequent rulemaking. The proposed rule clarifies this by providing discretion for conducting activities that maintain forest health by reducing the significant risk of wildland fire (also known as wildfire) to communities, municipal water supplies, threatened and endangered species, and to protect ecosystem components in the same manner as provided in the Healthy Forests Restoration Act (HFRA). All project activity will be subject to appropriate National Environmental Policy Act (NEPA) compliance procedures and public comment opportunities.*

Notice that the *stewardship* Governor Risch wanted in the rule was limited to forest health activities such as fire suppression and a clean water supply. It is unclear how mining activities in IRAs are a forest health issue; in fact, they are often contrary to the goal of sustainable forestry. The Tribes believe that this concept of stewardship is taken out of the need for forest health and being used to include cessations of roadless areas for mineral exploitation for the next 50 years.

To the Tribes, the term *stewardship* entails a responsibility on this generation to prevent the degradation of resources that will be passed to our posterity. Nowhere in the

Proposed Rule or the DEIS, is there a reference to how the exploitation of minerals within IRAs will increase the health of an ecosystem for future generations. The referenced comments from the DEIS, in Section VI, document a risk to the ecosystem from mining activities for generations to come.

This rule does not embody the ideal of stewardship and any statement to the contrary is misleading. The Tribes request that any management of the IRAs give due consideration of conservation for future generations of Tribal members. The Tribes should not be forced to bear the burden of unjust management that adversely impacts Tribal rights and traditional cultural practices.³² True stewardship of these roadless areas will require that IRAs are preserved in their current condition so that our posterity may enjoy the natural features associated with these IRAs that we do.

2. There has been considerable debate about whether or not ongoing leasing activities can be geographically expanded beyond current lease boundaries; particularly phosphate leasing on the CTNF. The Proposed Rule contains text at § 294.24(d) that resolves this question in the affirmative. At the effective date of a final rule, existing operations could expand beyond their current boundaries, including such lands as are necessary for access. The DEIS estimates an additional 12,100 acres will potentially be affected.

This would allow for the expansion of current mining operations into IRAs and we will face the same expansion issues with future mine expansions as we do with Smoky Canyon. An independent analysis of this exemption in the rule should be analyzed because this in essence will allow for the further degradation of IRAs adjacent to mining activities throughout the entire phosphate bed region. This analysis should take into account the environmental costs associated with remediation and contamination based on the probability that hazardous substances may present a threat to human health or the environment. The Tribes are opposed to an exemption for mining activities in IRAs or exemptions for mineral expansions into adjacent IRAs.

3. *Examples of when rulemaking would not be expected: (1) establishment by the Forest Service of a research natural area in a roadless area designated as primitive; (2) changing the designation of a small portion of backcountry adjacent to a large block of GFRG into the GFRG designation; (3) changing the designation of a small portion of backcountry adjacent to a large block of primitive into the primitive designation.*

The Tribes note that the changing of designations from more protective to less protective will not trigger the formal notice and comment rulemaking process. This is a significant shift of power away from the public to the agency and could result in serious backsliding of protections for IRAs. The Proposed Rule builds in a categorical exclusion for the designation of 'small' portions of forests without considering the alternatives or allowing for public input on the significance of that 'small' portion. This would allow for a potential expansion of GFRG acres beyond the 600,000+ acres already subject to the

³² United States Constitution, Article VI, provides that treaties are the supreme law of the land and other acts of Congress. The Tribes question the ability of an administrative agency to enact rules that adversely affect treaty rights without express delegation from Congress.

Proposed Rule.

The Tribes expect that the FS, as required by federal policy on government-to-government consultation and established protocol with the FS, engage the Tribes in meaningful consultation prior to making decisions that could impact the exercise of Treaty rights by Tribal members. The text of the Proposed Rule does not adequately provide the opportunity to engage in meaningful Tribal consultation or submit comments to changes in management themes and therefore, should be denied.

4. The DEIS claims that, *“The proposed rule does not prescribe site-specific activities on the ground, nor does it irreversibly commit resources.”*

The Tribes contend that the Proposed Rule does irreversibly commit resources in the form of severable minerals in the phosphate region and the roadless characteristics of IRAs in the GFRG and BCR themes. The legal issue is that the designation process of each IRA is a commitment of the resources within that IRA to a variety of consequences. The clearest example of that is the designation of GFRG, which would remove most of the road building protections and open 600,000+ acres to development activities.

Once the management theme has been set and the IRAs opened for development, as permitted by the zone designation, the character of the IRA is forever changed. The fact that the Proposed Rule does not prescribe logging or mining within a specific IRA is irrelevant, the management theme allows for that activity to occur and for new applications to be considered. It is the designation of the management theme that provides for this commitment of resources and the Tribes demand that the USDA analyze this petition in light of the direct, indirect and cumulative impacts to IRAs from management designation by evaluating individual IRAs.

5. § 294.24 Mineral activities in Idaho Roadless Areas. *“(d) After [final rule effective date], the Forest Service will not recommend, authorize, or consent to road construction or reconstruction associated with mineral leases in Idaho Roadless Areas that are listed as backcountry/restoration; except such road construction or reconstruction may be authorized in association with phosphates leasing. Surface use or occupancy without road construction or reconstruction is permissible for all mineral leasing... (f) After [final rule effective date], the Forest Service may recommend, authorize, or consent to activities associated with mineral leases in Idaho Roadless Areas that are designated to be managed pursuant to general forest, rangeland, and grassland theme.”*

This section authorizes the construction of roads in IRAs surrounding the phosphate deposits in the Caribou portion of the CTNF in both GFRG and BCR management themes³³. It is misleading to imply that the designation of BCR management themes in the phosphate deposit region will protect these IRAs from mineral development because of the presence of this exception for “phosphate leasing”. The Tribes object to this exemption for phosphate mining because it will impact the management of every IRA in

³³ Analysis of this provision and the maps provided reveals that over 80% of the phosphate deposit region will be open to mineral development and road building, regardless of its designation.

the phosphate deposit region. The Tribes oppose the Proposed Rule because it contains unnecessary exemptions for phosphate mineral interests and serves as one reason to deny this petition for rule change by the State of Idaho.

6. Management Theme 2: Special Areas of Historic or Tribal Significance (SAHTS)

Some Idaho Tribes expressed the desire to protect specific portions of IRAs based on their historic or Tribal significance; there is no such recognition of the Shoshone-Bannock Tribes interests in the DEIS.

The statutory definition is a *“Special area of historic or tribal significance theme: An Idaho Roadless Area classification intended to be relatively undisturbed by human management activities in order to maintain unique Tribal or historic characteristics”*.

Federal Laws and policies require that meaningful consultation occur throughout rulemaking that has the potential to impact Tribal rights or interests. The FS neglected to engage consistently in the consultation process with the Tribes and have drafted a rule that does not reflect our unique Tribal rights and interests. The Tribes demand that established consultation protocol take place prior to the issuance of any final decision. Meaningful consultation is not bringing a decision to the Tribes without taking the time to engage the Tribes to discern our concerns during the scoping process. To further illustrate the lack of meaningful consultation, the Tribes were sent a letter addressed to another Idaho tribe. The Tribes demand that federal laws, policies and FS-Tribal consultation protocol are followed consistently.

The Tribes object to the exclusion of our interests in vast tracts of IRAs throughout Idaho in light of the known Treaty rights and cultural resources significant to the Tribes. The inclusion of this management theme does not adequately include the holistic nature of the Tribes’ rights and interests in the continued preservation of every IRA in Idaho. The Tribes are reluctant to indicate ‘significant’ areas at the risk of sacrificing others.³⁴ The Tribes demand that every IRA within the aboriginal territory of the Tribes be managed under the terms of the SAHTS management theme, regardless of the outcome of this petition. The Tribes expect to receive comments on this request from the USDA, as per the federal policy of government-to-government consultation and the USDA’s trust responsibility to effectively manage lands that the Tribes retain an interest in.

7. The Designation of the Backcountry Areas

The Tribes biggest concerns with the BCR designation are: 1) it is the largest designation, almost twice the size of every other category combined, 2) this designation receives little protection in terms of road building and mineral exploration/exploitation, and; 3) the expansive definition for the area may allow for many lands to be subject to open that were previously inaccessible. As discussed above, the Tribes have a concern with the BCR management theme because it will allow for phosphate exploration and exploitation

³⁴ Albers 1993, pg. 10 (“Conceptually, where people stayed and where people moved were one and the same thing. A person’s place in the world and that of their kindred are not marked by a single location, but by the range of territories in which they moved to secure their livelihood.”)

in IRA's adjacent to existing phosphate mines near Soda Springs and the Smoky Canyon Mine.

The Backcountry/Restoration theme is comprised of 5,246,100 acres across the State and is virtually twice the size of all other themes combined. That means that by acreage, more acres will be subject to the liberal exploration/exploitation rules than under previous regimes of management plans. It seems convenient for industries like the mining interests, forestry industry and even those real estate developers seeking to encroach on roadless areas, that more acres will be up for further detrimental activities than will be protected under the old management plans. It gives a clear signal to these industries that Idaho's unprotected roadless areas are now up for grabs. The potential for high impacts to the Tribes' treaty interests in these areas is clear.

The Backcountry designation allows for the exploration of minerals and timber activities, as well as permanent road building and surface occupancy associated with mining. In comparison to the prohibitive nature of the more conservative management themes, the BCR designation appears to place an emphasis on sustained development of natural resources. This development will occur even at the expense of the overall natural features of an area, although the plan describes it as a slow slide model. The Tribes cannot approve of a management scheme that allows for the exploitation of IRAs, especially when the impacts are foreseeable into future generations.

The definition of the backcountry theme is expansive in nature because it allows for activities incident to the nature of the approved activity. For example, suppose a timber harvest is approved, then a road can be constructed to harvest that timber, then common minerals might be harvested incident to that timber harvest and so on. The Proposed Rule allows for the continuous exploitation of natural resources based on the initial approval of an activity within a given management theme.

In the BCR theme timber harvest is allowed if there is already a road within the BCR IRA and an official determines that the characteristics have been changed. Road construction is allowed for phosphate leasing. Common, saleable minerals will also be at risk for exploitation once an activity is authorized and a road built to access other resources. This process allows for an official to begin the process of exploitation and road building, altering the characteristics of an area. Then once the characteristics of an area have been altered due to a previous activity, allow for further degradation by permitting more activities. The Tribes strenuously object to this permissive management and require that the USDA deny the petition Idaho submitted because of the cumulative impacts from the promulgation of the Proposed Rule.

8. General Forest, Rangeland, Grassland (GFRG) designation problems

The designation of the General Forest, Rangeland, Grassland (GFRG) is by far the most disconcerting to the Tribes. The Tribes maintain an interest in preserving the unique features of the IRAs in Idaho because they provide us with sustenance, spiritual healing and allow for a continuous connection to the land of our ancestors. The GFRG designation allows for the building of roads, leasing of known phosphate deposits, limited

development and timber harvests. Under the Proposed Rule 600,000+ acres are in the GFRG management theme.

The GFRG theme permits any activity within the boundaries, subject only to the applicable forest management plan. It is the most permissive theme and the most predominant in the CTNF of Southeast Idaho. Over 66% of the total statewide acreage of GFRG occurs in the CTNF, not surprisingly, in the heart of the phosphate deposit area. By designating this area as GFRG it opens the heart of the roadless area to future exploitation of phosphorous into the future. In addition, IRAs not associated with phosphate deposits are listed in the GFRG theme, leading the Tribes to conclude that other forms of development will be forthcoming in those areas.

There is no explanation for the designation of certain IRAs under this permissive and exploitive theme in the DEIS. If these areas are somewhat compromised through unauthorized activities then every acre in this theme should be protected and slated for restoration activities. These areas will be sacrificed to development because of a perceived financial benefit to the phosphorous industry, unscrupulous developers and timber companies. The Tribes have significant rights and interests tied to the CTNF and refuse to shoulder the burden of development.

The USDA relies on a flawed analysis, trying to quantify the opportunities for 'solitude' or 'challenging experiences' instead of analyzing the inherent benefits that each IRA provides to the surrounding ecosystem. It is obvious that a high-sagebrush IRA may not have plentiful 'vegetative screening' but it does not diminish the benefits to the biotic communities that rely on that particular habitat type for survival. The petition fails to analyze the direct and indirect impacts of the rule and cannot possibly define the cumulative impacts from the loss of multiple IRAs to future development under the Proposed Rule. The Tribes demand that this petition be denied.

9. Changes to Roadless Area Characteristics

The roadless area characteristics listed below have the potential to be affected by the promulgation of the proposed rule. Pgs 35-37

1. High quality air, soil and water have the potential to be affected by the promulgation of the Proposed Rule.
2. Can affect the ability of a roadless area to provide quality drinking water
3. Can affect the diversity of a roadless area
4. Can change the ability of a RA to provide habitat for listed species or SSS.
5. Could change the amount or condition of reference landscapes
6. Could change the amount of dispersed recreation opportunities.
7. Can affect the scenic quality of a RA.
8. Can affect TCPs or cultural/historical sites in the RA.

The DEIS indicates all of these impacts are foreseeable and probable if the USDA approves and promulgates the Proposed Rule. The potential negative impacts to the entire forest system far outweigh any of the short-term benefits realized by a few special interests. The Tribes conclude that the DEIS does not adequately analyze the associated

economic and ecological impacts. On balance, preservation of the IRAs remaining in Idaho is the only rational choice for the USDA, requiring a dismissal of the State's petition and the continued implementation of the 2001 Roadless Rule.

10. Cultural Resource Concerns – Specific comments

Chapter 3 pg 256. The cultural resource definition is limited to archaeological and historic resources. Drafting a holistic definition of cultural resources will increase the credibility of the next sentence, which states "These resources link people to their cultural history..." Recognizing cultural resources beyond historic and archaeological expands the scientific baseline for the affected environment, permitting a more comprehensive analysis of cumulative, direct and indirect effects on cultural resources.

The National Historic Preservation Act (NHPA) requires the FS to conduct Section 106 prior to any proposed project, for evaluation of sites for potential nomination to the National Register. Furthermore, if a site is evaluated as significant and affected by project actions, then site avoidance is a possible mitigation for adverse effects. Include the word avoidance in the last sentence on pg. 256.

Chapter 3 pg 263. Paiute is misspelled, please note this and revise for future documents.

Chapter 3 pg 264. The DEIS states, "protection, use, and access to sacred sites are analyzed", but beyond this statement no analysis or discussion of sacred sites is presented. The preceding discussion of the importance of the riverine habitat is significant as it begins to describe the intricate relationship between Tribal people and the land. The identity of Tribal people is directly related to the natural environment. A traditional cultural practice passed down from the ancestors, for the Shoshone and Bannock people, is prayer and the sacredness of all life. Site specific analysis is not indicated in the DEIS, nor discussed in the formal government-to-government consultations for the known cultural sites that are within IRAs, much less the undiscovered sites that likely dot the landscape. Without an adequate baseline this analysis will not suffice to give the reassurance that the consequences have been adequately analyzed.

A. Heritage Tourism Impacts on Tribal Sites

Chapter 3 pg 262, *Cumulative effects*. Cumulative effects introduces the term "heritage tourism", stating that 'cultural resources are a valuable resources for future visits by the general public'. Utilizing heritage tourism to generate revenue can be a destructive impact to cultural resources considered important to the Tribes. Cultural properties of the Shoshone-Bannock Tribes are not considered as an economic commodity. Often the public disclosure of sacred sites leads to their destruction or the additional tourism does not allow a Tribal member to utilize the site at their leisure. These cultural resources contributed to the Shoshone and Bannock people distinct and unique heritages. Tribal members continue practicing the way of life for hunting salmon, big horn sheep, gathering roots and berries and prayer, thanking our creator for the Blessing. These are cultural ways practiced by our grandmothers and grandfathers for generations, on the same land.

V. Road Building Concerns

Under the 2001 rule there was a prohibition on road building, unless there were exigent circumstances that justified building a temporary road. Under the new management themes about a third of all acres of IRAs in Idaho would be eligible for some level of road building. Needless to say that the building of a road degrades the roadless characteristics of an area such that the area may have irreparable impacts. Moreover, under the 2001 rule for the 1.0 miles of road built in IRAs there was 1.0 miles of roads being decommissioned, resulting in no net gain of new roads. Under the existing management plans there are net increases on an annual basis of new roads in IRAs.³⁵

Roads can also be constructed to treat fuel stocks in 71% of the WUI category, thereby increasing the probability that road construction in a WUI will increase human activity in an IRA. From a management perspective, building roads into a roadless area near human settlements exponentially increases the risk that there will be associated, unauthorized human activities in the roadless area.

On all 235,000 acres of highly sensitive soils found in the GFRG theme, road building is allowed. The DEIS, page 14, states that there will be a likely impact to highly sensitive soils from road building from mining activity and a negligible effect from timber harvest. This overlooks the fact that even temporary roads heavily impact the forest system by providing access for hunters, soil displacement and sedimentation, as well as the potential to destroy or modify sacred cultural sites.

Road building has been identified as one of the most detrimental activities that can occur in a forest system because of its impacts on soil conditions, water quality, stream turbidity, sedimentation of spawning habitat, wildlife habitat and migration routes. IRAs provide the last refuge for sensitive species and intact watersheds throughout Idaho. Studies show that fish passage is a major concern near existing roads because of culverts and improperly maintained crossings. Other evidence points to an increase in take numbers for wildlife near roads. An increase in sedimentation around spawning habitat adversely impacts fish populations and road building increases sedimentation.

The present roads provide adequate access to the national forest lands. Given the backlog of maintenance for those roads, it makes little fiscal sense to approve new road building activities. The USDA needs to repair and adequately maintain the roads that are in existence and then discuss the need to provide additional motorized access at a later date, for specific areas, and not in this programmatic Proposed Rule.

The Tribes demand that the FEIS includes an approved, peer reviewed method for constructing and decommissioning roads within the forest system. The method must use the most up to date GIS data available and the planning must account for a near-zero impact on the area for any temporary road. The Tribes object to building roads into IRAs for any purpose and request that the USDA reject the petition filed by the State of Idaho

³⁵ According to the DEIS there will be a 1.0 mile net gain of new roads under the Proposed Rule.

because of the likelihood that the impacts from road building will compromise the integrity of IRAs throughout the forests of Idaho.

VI. Phosphate Mineral Exploitation Comments

The following phosphorous specific concerns address the impacts of phosphorous related mining mentioned in the preceding sections. The Tribes have experienced, firsthand, the environmental impacts associated with phosphorous extraction, transportation and processing of minerals. NEPA requires a high level of review as to the nature and extent of foreseeable degradation within IRAs, specifically within the phosphate deposit region. This issue can only be resolved by the release of a supplemental EIS for the public review process before an informed decision can be made for the entire Idaho Proposed Rule. Withholding the necessary information does not inspire faith in the federal decision-making process, and violated the very spirit of NEPA's mandates. The Tribes require this same analysis to be completed on all GFRG and BCR designated themes because both allow for phosphate mining and mineral development, and would have the potential to cause significant harm and impact to the environment.

The tables associated with the future exploitation of phosphorous and associated minerals indicate that over the next 50 years, there will be over 12,000 acres of soil disturbed and millions of tons of material displaced from the geologic layers within the Phosphate deposit region. The Proposed Rule focuses the analysis of the impacts to the phosphate region by analyzing those impacts in terms of economic benefit to the immediate local communities that rely on mining. This clearly indicates the document's bias toward one particular value of the IRAs within the phosphate deposit region. There is little more than a cursory review of the potential impacts to groundwater or surface water that have been scientifically documented from the existing mineral activities and resulting CERCLA clean up and remediation efforts.

In the DEIS states it is reasonably foreseeable that mineral exploitation will occur within the IRAs of the phosphate deposit region. Although there is a general review of the impacts that may occur to the region as a whole, there is no discussion of the impacts that will be borne on any one single roadless area, or even the Caribou National Forest overall. The obvious, inadequate environmental review stands in opposition to established case law and the mandates of NEPA.³⁶

The Tribes analysis of the Smoky Canyon Mine FEIS for the proposed expansion included reviewing statements by the FS's own expert on selenium impacts to aquatic ecosystems, Dr. A. Dennis Lemly. Dr. Lemly's stated in a letter regarding the proposed Smoky Canyon Expansion into the Mead Peak and Sage Creek Roadless Areas, "This ecosystem is a tinder box, and allowing additional selenium discharges will likely start a cascade of *irreversible* events, culminating in severe toxic impacts to fish and aquatic life for many years to come."³⁷ The FS has already had an opinion as the probable impacts

³⁶ Citizens for Better Forestry v. USDA, 341 F.3d 961, 965-66 (9th Cir. 2003) (Requiring the Forest Service to perform adequate NEPA analysis with regard to the 2005 rule.)

³⁷ A. Dennis Lemly, Ph.D., U.S. Department of Agriculture, Forest Service, Southern Research Station, Fisheries Research Unit, February 21, 2006 letter "RE: Draft Environmental Impact Statement for Smoky

for one project that is planned for the CTNF and the Tribes cannot understand the rationale in the DEIS that downplays the potential impacts from future mining activities. The FS, through their own expert, indicates that the risks are clear and that any general allowances made for phosphate extraction activities would only increase the likelihood of irreparable injury to an already fragile ecosystem.

The USDA is required to take the Tribal and public interest into account when approving leases and may only approve a lease if it is a 'valuable deposit'. Case law regarding the disposition or leasing of public lands states that the Secretary must take into account the cost and feasibility of reclamation when balancing the economic feasibility of a proposal to mine phosphate.³⁸ Given the extreme costs and uncertain results regarding the reclamation of retired, contaminated phosphate mines, it is reasonable to request that any future document disclose the amount, per reclaimed acre, which is associated with phosphorous mining. The disclosure should also detail how much of the cleanup is federally, state or privately funded. The petition should be denied because it contains a permissive attitude and multiple exemptions for phosphorous exploitation that will irreversibly alter the landscape of Southern Idaho.

The DEIS states numerous times that the economic impact of phosphate mining is a positive contributor to the local economy and the surrounding region. This analysis is biased and goes against the great weight of the evidence in several respects. First, it fails to analyze the impact on water quality throughout the Blackfoot and Salt River Drainages.³⁹ Second, there is a failure to analyze the economic impacts associated with numerous regional Superfund sites that are the result of past mining activity. Finally, there is a failure to quantify the actual economic impact from the loss of recreational activities in the region and impacts to Tribal trust resources from increased phosphate mining in the IRAs.

The DEIS describes the values of phosphate mining to the local economy and its impact on the greater region in Idaho. However, no mention is made of the millions of dollars in federal funds spent on the numerous superfund sites. There is no balance of costs and benefits, implying that there are only positive benefits associated with the mining of phosphate. However, due to the potential risks of creating additional Superfund sites, which would require expensive cleanup and remediation, and would require millions of dollars. This information must be provided and analyzed by the Forest Service in the FEIS to

Canyon Mine Expansion Proposal" "To: Smoky Canyon Mine DEIS, c/o The Shipley Group, P.O. Box 2000, Bountiful, Utah 84011-2000, p. 4. Emphasis added.

³⁸ Kerr-McGee Corporation v. Hodel 630 F.Supp. 621 (D.D.C.1986). The court held that "[t]o demonstrate the discovery of 'valuable deposits' of phosphates" that would entitle them to mining leases, the appellants were "required to show the economic and technological feasibility of reclaiming the lands covered by the lease applications," and that "[t]he restoration technologies necessary to insure the adequate utilization of the Osceola Forest for its primary purposes did not exist in January 1983 or in 1984, and did not exist at any earlier time." 630 F.Supp. at 629.

³⁹ As noted above, there are currently over 100 miles of streams that are impaired because of Se in the water, affecting fish population and groundwater. There should be no additional mining activity until the nature and scope of the contamination is fully assessed so that the open mining management does not contribute to a problem already in existence.

ensure that an adequate analysis is conducted on the issues for direct, indirect and cumulative impacts to the environment.

There is no discussion of the contribution that is made to local economies as a result of eco-tourism and the potential impact that future mining activities pose to the greater region. This one-sided analysis reveals a clear bias toward the alleged benefits of phosphorous related activities without taking into account the cost to the public. These costs have been clearly documented and are readily visible in the phosphate deposit region. The Tribes demand that any future analysis account for the costs of remediation, environmental degradation, loss of wildlife habitat, damage to Treaty resources, impacts to Tribal water quality, degradation of the Blackfoot and Salt River drainages, adverse impacts to resident fish, impacts to local grazing practices, impacts to outdoor interest and adverse impacts to recreational opportunities. It is clear that the DEIS failed to disclose these impacts as required for direct or indirect effects, much less as cumulative effects from the permissive management themes surrounding phosphate mining.

There are several streams in the phosphate deposit region that have been designated, under the Clean Water Act (CWA), as failing to meet federal standards for selenium and other toxins. The DEIS does not disclose this fact and fails to analyze the additional direct and indirect impacts from future phosphate mining activities, which are, according to the DEIS, reasonably foreseeable over the next 50 years. The DEIS is insufficient because it fails to analyze and provide baseline information to the public, which leads to a misleading conclusion about the impacts to water quality. Because there is a factual disconnect it is clear that any attempt to provide a decision based on the provided information will be viewed as an abuse of discretion by the federal agencies.

The DEIS fails to effectively consider and analyze the risks to the Tribal interests in the Caribou portion of the CTNF in the particular roadless areas. It is therefore concluded, that the only adequate level of analysis will be to perform a full environmental analysis of each IRA in the phosphate deposit region to establish baseline conditions, evaluate the impacts from the proposed alternatives, and address the impacts from mineral activities within the phosphate deposit region.

In support of the Tribes' assertions that there are reasonably foreseeable direct, indirect and cumulative impacts to specific roadless areas, the following excerpts from the DEIS are offered.

ES pg 13, Comparison Table – There are 12,100 acres of IRAs which will be developed that are not currently under lease.

Ch. 3 pg 81 - "*Phosphate*-All known phosphate deposits would be developed if road construction, reconstruction, and surface occupancy were permitted."⁴⁰

⁴⁰ This statement in the DEIS makes it apparent that all known phosphate deposits, whether leased or unleased, will be developed over the next 50 years. The Tribes oppose this level of consideration for the sanctity of the IRAs in the CTNF and will oppose any further efforts to allow for generations of unfettered mineral exploitation.

Chapter 3 pg 83 - The expansion of phosphate mining into Roadless areas defeats the purpose and management direction to protect and preserve the environment. As stated in DEIS all phosphate mineral will be mined contingent upon road construction and page 79 of the DEIS, it states that the road construction budget is flat line, suggesting road construction may happen on a limited basis. The DEIS states also that 17 miles of new road would be needed in Southeast Idaho roadless areas for phosphate mining. Road construction is a concern and does impact cultural resources.

Ch 3. p 122. The Idaho Roadless Rule would permit road construction/reconstruction in the Backcountry and GFRG themes to provide road access for phosphate exploration and development. The projection of one mile per year of road construction/reconstruction for other uses includes roads constructed to access existing phosphate leases (table 3-14). Phosphate exploration and development has been ongoing in Idaho Roadless Areas, and several areas are currently under lease (see Minerals section).

Ch. 3, pg 133. Given a history of phosphate deposits being leased outside of KPLA boundaries (table 3-16); it is assumed that the Caribou has additional roadless areas outside KPLAs with phosphate potential. Lands outside of KPLAs would need further exploration to determine their leasing potential.

Ch. 3 pg 142- "There would be no near-term impacts on the recovery of phosphate resources under the Idaho Roadless Rule because the foreseeable development would occur in the Backcountry and GFRG themes, which are not subject to the road construction/reconstruction prohibitions."

Ch. 3 142 Phosphate. There are 13,400 of known unleased deposits on the Caribou-Targhee National Forest. About 12,100 acres (90 percent) of this total would be managed under the Idaho Roadless Rule Backcountry and GFRG themes. Under these themes, road construction or reconstruction would be permissible to develop phosphate resources. Consequently, any unleased phosphate deposits could be leased to provide for the mining of phosphate reserves. If fully developed, roughly 545 million tons of phosphate could potentially be recovered.

Ch. 3 pg 152. There are 13,400 acres of known unleased phosphate deposits on the Caribou-Targhee National Forest. About 12,100 acres (90 percent) are located within the Backcountry and GFRG themes. Under these themes road construction or reconstruction would be permissible to develop these phosphate deposits. These deposits are located within nine roadless areas (Dry Ridge, Huckleberry Basin, Meade Peak, Sage Creek, Schmid Peak, and Stump Creek on the Caribou portion of the forest; and Bald Mountain, Bear Creek, and Poker Creek on the Targhee portion of the forest) and could eventually be mined over an extended period of time (50 or more years). There is a potential risk to soil resources on

these 12,100 acres when and if development should occur. Site-specific analysis would occur prior to any future exploration or development and mitigations applied.

Ch. 3 pg 175. The Idaho Roadless Rule would permit road construction or reconstruction and surface occupancy within the Backcountry and GFRG themes to access unleased phosphate deposits. There are 13,400 acres of known unleased phosphate deposits on the Caribou-Targhee National Forest. About 12,100 acres (90 percent) are located within the BCR and GFRG themes. These deposits are located within nine roadless areas (Dry Ridge, Huckleberry Basin, Meade Peak, Sage Creek, Schmid Peak, and Stump Creek on the Caribou portion of the forest and Bald Mountain, Bear Creek, and Poker Creek on the Targhee portion of the forest) and could eventually be mined over an extended period of time (50 years or more). There is a potential risk to sensitive plant species habitat on these 12,100 acres when and if this development occurs.

Ch. 3 pg 192. Of particular concern to aquatic resources in Idaho is selenium contamination resulting from phosphate mining. Selenium contamination has occurred world-wide in association with common and economically important activities such as fossil fuel processing, mining, and irrigation, resulting in dozens of cases in which fish and wildlife populations have been affected (Van Kirk and Hill 2006). The southeast Idaho phosphate mining region, which includes the Caribou National Forest, is one of the most extensive and productive phosphate fields in the world (Jasinski et al. 2004). The bioaccumulative nature of selenium in aquatic systems is well-documented (Presser et al. 1994, Dobbs et al. 1996, Maier et al. 1998, Garcia-Hernandez et al. 2000, Hamilton 2002). Documented individual-level effects of selenium in fish include decreased egg incubation period, hatch rate, pre-swim-up fry survival, post-swim-up fry survival, juvenile winter survival, juvenile growth, adult survival, and adult growth (Van Kirk and Hill 2006). Modeling results from Van Kirk and Hill (2006) concluded that decreased juvenile survival in cutthroat trout due to selenium toxicity could result in decreased population size.

Ch. 3 pg 198. There is a potential risk to habitats for sensitive aquatic species (Bonneville cutthroat trout and amphibians) on these 12,100 acres when and if this development should occur. Site-specific analysis would occur prior to any future leasing and mitigations applied. No threatened or endangered aquatic species are found in these roadless areas.

Ch 3 pg 216. There is a potential risk to terrestrial species habitat on these 12,100 acres when and if this development should occur. Site-specific analysis would occur prior to any future leasing and mitigations applied.

Ch. 3 pg 222. The Idaho Roadless Rule would permit phosphate development on 21,000 acres (existing and unleased lands), whereas the 2001 Roadless Rule would permit development on 9,100 acres on only prior existing leases. This

difference is immeasurable, within the context of Idaho Roadless Areas as a whole. The phosphate development would potentially occur on the edges of nine roadless areas, leaving the core of the roadless areas intact. Prior to development, additional environmental study would occur and any necessary protection measures would be applied.

Ch. 3. pg 230 - As the known phosphate deposits are mined, their scenic values would be lowered on approximately 21,200 acres under lease or with the potential to be leased.

Ch 3 pg 237 - When and if these sites are developed then dispersed recreation opportunities would not be available on these areas.

The reasoning in the DEIS leads to a false conclusion; in that it perceives the only impact from phosphate mining to be associated with the road building aspect and positive economic gains. The impacts from phosphorous mines are well-documented, not quantified in this document and include, but are not limited to: selenium contamination, soil disturbances, vegetation loss, habitat loss and substantial permanent geological and topographical changes. The release of known hazardous substances to the environment also leads to an increased risk of human health concerns that require cleanup or remediation under CERCLA or RCRA regulations, resulting in huge costs to the federal government and US citizens' tax dollars.⁴¹ This lack of consideration for these impacts renders this DEIS insufficient to draw any reasonable conclusion.

The permissive attitude toward mining activities allows for mining companies to acquire leases on these federal lands and subsequently begin mining at some distant point in the future. This is an irreversible commitment of resources because there is no effective mechanism to prevent that activity once the lease is entered into. The Proposed Rule gives to the Secretary of Agriculture the additional authority and discretion to issue a lease in an IRA, where there is currently no authority to do so. The Tribes demand that the exceptions for phosphorous mining be immediately removed from any future document and deny the State's petition for rule change and continue to implement the terms of the 2001 Rule.

⁴¹ There are currently several superfund sites that have been declared a public health risk in the phosphorous mining region. These sites are being funded, at least in part, by tax dollars from the federal and state government. The region also bears a stigma of being unsafe because of the levels of contamination surrounding the area. None of this is revealed by the DEIS.

THE POLICY OF THE SHOSHONE-BANNOCK TRIBES FOR MANAGEMENT OF SNAKE RIVER BASIN RESOURCES

November 1994
Resolution # GAME-94-1049

ISSUE DEFINITION

Beginning in 1989 and continuing through 2008, many non-Federal hydroelectric projects (Projects) within the Snake River Basin (Basin) will be reviewed under the Federal Energy Regulatory Commission relicensing process. In addition, subsequent to the listing of various salmon and snail species under the Endangered Species Act as well as the initiation of other conservation efforts, the Basin is being viewed, as never before, as a valuable resource contributing to the overall Pacific Northwest regional conservation framework. The Shoshone-Bannock Tribes support efforts to conserve, protect, and enhance natural and cultural resources within the Basin and therefore establish this policy to re-emphasize previous policy statements and provide new direction with regards to recently initiated Basin actions.

BACKGROUND AND INTRODUCTION

Since time immemorial, the Snake River Basin has provided substantial resources that sustain the diverse uses of the native Indian Tribes including the Shoshone-Bannock. The significance of these uses is partially reflected in the contemporary values associated with the many culturally sensitive species and geographic areas within the Basin. Various land management practices, such as the construction and operation of hydroelectric projects have contributed extensively to the loss of these crucial resources and reduced the productive capabilities of many resource systems. These losses have never been comprehensively identified or addressed as is the desire of the Shoshone-Bannock Tribes.

The Shoshone-Bannock Tribes reserved guaranteed continuous use Rights to utilize resources within the region that encompasses and includes lands of the Snake River basin. The Fort Hall Business Council has recognized the contemporary importance of these Rights and resources by advocating certain resource protection and restoration programs and by preserving a harvest opportunity on culturally significant resources necessary to fulfill inherent, contemporary and traditional Treaty Rights. However, certain resource utilization activities including the operation of federal and non-federal hydroelectric projects effect these resources and consequently, Tribal reserved Rights.

It has always been the intent and action of the Shoshone-bannock Tribes to promote the conservation, protection, restoration, and enhancement of natural resources during the processes that consider the operation and management of Federal projects and during the land management activities of other entities.

This policy re-emphasizes the Tribes previous policies with regards to these processes and activities. However, the formal relicensing process for non-federal projects (Projects) as well as other recent undertakings that will consider the overall management of the Basin represent previously unavailable opportunities to comprehensively identify and address impacts to and losses of, resources affected by these Projects.

The importance of considering Tribal goals and objectives for effected resources is specifically recognized in the regulations outlining the federal relicensing process. The Fort Hall Business Council has established the following policy for the Basin in order to provide guidance in determining these goals and objectives. This direction is intended to be consistent with existing Tribal policy for participating in processes dealing with other land and water management activities.

STATEMENT OF POLICY

The Shoshone Bannock Tribes (Tribes) will pursue, promote, and where necessary, initiate efforts to restore the Snake River systems and affected unoccupied lands to a natural condition. This includes the restoration of component resources to conditions which most closely represents the ecological features associated with a natural riverine ecosystem. In addition, the Tribes will work to ensure the protection, preservation, and where appropriate-the enhancement of Rights reserved by the Tribes under the Fort Bridger Treaty of 1868 (Treaty) and any inherent aboriginal rights.

CONCLUSION

In addition to the ongoing efforts of the Tribes and its cooperating agencies, the relicensing process as well as recently initiated Basin recovery efforts provide a firm basis for striving to meet Tribal needs regarding resource conservation, protection, and enhancement. This policy will provide direction to Tribal staff for participating in regional processes as well as for the future development of resource and process specific Tribal plans and guidelines.

Tribal participation in the Project relicensing efforts will be used to identify the direct, indirect, and cumulative effects attributable to the construction, operation, and any proposed modifications of Project facilities. The Tribes expect the license applicant(s) and the Federal Energy Regulatory Commission, in consultation with the Tribes and agencies during the relicensing process, to identify alternative management strategies and develop mitigation measures to reduce or eliminate the identified impacts consistent with this Policy.

In combination with existing policy and direction, other natural and cultural resource management activities (typically those undertaken by the Tribes cooperating agencies) will be utilized to identify additional land management impacts within the Snake River Basin and will similarly identify alternative management strategies and apply mitigation measures consistent with this Policy.

All cooperating agencies will be expected to utilize all available means, consistent with their respective trust responsibility mandates, to protect Treaty rights and Tribal interests consistent with this Policy.

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